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Planning for Second Units

Assembly Bill 1866 (Wright), passed during the 2001-2002 legislative session, will go into effect on July 1, 2003 making the approval of second units a ministerial process rather than the discretionary process currently used by most jurisdictions. As a result, existing requirements for discretionary review and public hearings on the approval of second units permits will be in violation of State law. Cities and counties will need to review their second unit ordinances for compliance to the new law and make amendments as necessary.

To assist cities and counties in implementing this new law, the Regional Planning Committee of the Association of Bay Area Governments held a *Planning for Second Units Forum* on March 28, 2003. This half-day workshop examined the legal implications and the how-to of building this housing type.

Panelist materials from the March 28th forum:

- [Betsy Strauss](#) (127K PDF) - A paper that reviews the legislative history of second units, the courts' interpretation of California Government Code Section 65852.2, and the changes brought by AB 1866. The paper concludes with a set of issues left unanswered by AB 1866.
- [Wayne Goldberg](#) (3MB PDF) - Staff reports for the City of Santa Rosa Planning Commission that include Government Code Section 65852.2, the existing second dwelling unit zoning code, the proposed second dwelling unit zoning code, a draft Declaration of Restrictions, several public comment letters, and the final draft of the second dwelling unit zoning code.
- [Alan Strachan](#) (73K PDF) - Handout on the economics of including second units in new subdivisions as a way to significantly expand the availability of housing affordable to moderate income buyers, as well as very-low and low income renters.
- [Betty Pagett](#) (152K PDF) - A strategy paper by the Non-Profit Housing Association of Northern California (NPH) that provides the "six steps" needed to get local government approvals for affordable housing.

Legislation and Government Code:

- [Department of Housing and Community Development - AB 1866 technical paper](#) (511K PDF)
- [AB 1866 - Chaptered](#) (29K PDF)
- [California Government Code §65852.2](#) (47K PDF)

Examples of draft and adopted ordinances from Bay Area

jurisdictions:

- [Livermore Ordinance](#) (65K PDF) - Draft ordinance approved by the City Council on May 5, 2003 as final.
- [Santa Rosa Final Draft Ordinance](#) (258K PDF) - Excerpted from the Wayne Goldberg panelist materials above. The Santa Rosa City Council has yet to take action on this ordinance.

Association of Bay Area Governments
PLANNING FOR SECOND UNITS FORUM

“...the fundamental value judgment at stake here –
a choice between housing and parking –
was made by the Legislature in favor of housing.”¹

Betsy Strauss
Special Counsel, League of California Cities
City Attorney, City of Rohnert Park
March 28, 2003

¹ *Wilson v. City of Laguna Beach* (1992) 6 Cal.App.4th 543, 546.

Introduction

The Legislature restated its twenty-year commitment to second units as a valuable form of housing in California most recently in AB 1866 (Wright).² This paper will consider the amendments made to Government Code § 65852.2 by AB 1866 (Wright) by reviewing (1) the legislative history of second units; (2) the courts' interpretation of Section 65852.2; and (3) these most recent amendments to the law. The paper will conclude with a set of issues that have been left unanswered by this legislation.

Legislative History

The Legislature first expressed its interest in second-family residential units in 1982 when it acknowledged the “tremendous unmet need” for new housing in California, declared that “existing housing resources are vastly underutilized,” and determined that second-family residential units were a useful tool to provide (1) a cost-effective means of serving development through the use of existing infrastructure; (2) relatively affordable housing; (3) a means for purchasers of new or existing homes to pay their high interest home loans; and (4) security for homeowners living alone.³ This first authorization to create second units in single-family and multifamily residential zones allowed for review by conditional use permit if a city or county adopted its own ordinance; required approval, without a conditional use permit, if in compliance with statutory standards, if a city or county failed to adopt its own ordinance; and prohibited adoption of an ordinance which totally precluded second units within single-family and multifamily zoned areas unless the ordinance contained certain findings. “Second unit” was defined as either a detached or attached dwelling unit. The statute was hailed as “one of California’s more innovative efforts” to respond to the housing crisis.⁴

The 1986 amendments to Section 65852.2 made certain changes to the standards applicable to a city that did not adopt its own ordinance. The total floor space of a second unit was restricted to 640 square feet; and an increase in floor area could not exceed 15% of the existing living area.⁵ The 1990 amendments increased the floor space restriction to 1200 square feet and the increase in floor area to 30% of the existing living area.⁶ The 1994 amendments, among other changes, added § 65582.2(e) establishing maximum parking requirements.⁷

Up until the most recent amendments made to Section 65852.2 by AB 1866 (Wright), the law as enacted in 1982 remained essentially as originally enacted: a city, by ordinance, was able to exercise its discretion to approve, disapprove, or approve with conditions, second residential units through a conditional use permit; a city without an ordinance was

² Statutes of 2002, Chapter 1062.

³ Section 1 of Statutes. 1982, Chapter 1440.

⁴ This statement was made in a letter to the Senate Local Government Committee concerning the genesis of the statute, Senate Bill 1534 by economist David Shulman.

⁵ Statutes of 1986, Chapter 156.

⁶ Statutes of 1990, Chapter 1150.

⁷ Statutes of 1994, Chapter 580.

required to approve second residential units found to be in compliance with the statutory standards; and a city was prohibited from totally precluding second units within single-family or multifamily zoned areas unless certain findings could be made.

In a precursor of the state policy expressed in AB 1866 (Wright), the Legislature adopted Government Code § 65852.150 in 1994 reiterating its belief that second units are a valuable form of housing and stating:

It is the intent of the Legislature that *any second-unit ordinances adopted by local agencies have the effect of providing for the creation of second units* and that provisions in these ordinances relating to matters including unit size, parking, fees and other requirements are not so arbitrary, excessive, or burdensome so as to unreasonably restrict the ability of homeowners to create second units in zones in which they are authorized by local ordinance (emphasis added).

Judicial Interpretation

Understanding the implications of both Government Code § 65852.150 and the two following cases may have allowed one to anticipate the principal change in the law made by AB 1866 (Wright) – prohibiting review by conditional use permit, and requiring the ministerial approval of second residential units.

Jeffrey Harris owned a small 869-square-foot home in Costa Mesa in a residential area designated as low density residential. In 1991, Mr. Harris applied for permission to raze his detached garage, facing on an alley, and erect a two-story building – a three-car garage with carport below and an apartment above. The building was to contain one bedroom, a study, living room dining room and two bathrooms. Although the City’s zoning administrator approved the plan because it conformed to all development standards in effect at the time of its approval, neighbors appealed the approval to the Planning Commission. Forty-seven out of fifty-seven homeowners within 300 feet of the residence opposed the project. The City disapproved the use permit based upon findings relating to inconsistency with the neighborhood; the tendency to create invasions of privacy; and the size of the structure. The Court upheld the City’s disapproval finding that there was substantial evidence in the record to support the findings.⁸

Harold Wilson owned a second unit annexed into the City of Laguna Beach in 1987. Within a month of the annexation, the City began code enforcement proceedings to remove the unit. Mr. Wilson submitted an application for approval under Section 65852.2(b) since the City had not adopted a second unit ordinance pursuant to Section 65852.2(a). Subdivision (b) calls for approval of a second residential unit if it complies with the statutory standards set forth in that subdivision. The City’s refusal to approve the application was overturned by the Court with the following disdainful comments:

⁸ *Harris v. City of Costa Mesa* (1994) 25 Cal.App.4th 963.

What is the Impact of High Ratio* Granny Units on Affordable Housing?

An easily implemented change in the way we design subdivisions can have a dramatic impact on the affordability of housing for moderate, low and very low income households. By shifting from "front loaded" to "rear loaded" site plans we can significantly lower the cost of housing for moderate income families, while simultaneously increasing the stock of housing affordable to low and very low income households. The connection between site plan and affordability derives from the ease of including granny units on rear loaded houses vs the difficulty of doing so on front loaded homes.

On a rear loaded house it is easy to include a granny unit over the garage, with parking for the granny flat directly adjacent. The cost of adding a granny unit over the garage at the time of building a new house is about \$35,000. Rent for a one bedroom granny unit is about \$750/month. The price for a home with a granny unit is about \$50,000 higher than for one without a granny.¹

The granny unit rent amortizes a price difference of \$100,000. This allows someone at moderate income to buy a median priced home in Santa Rosa, using the granny unit income to help with the mortgage payments; in the process, the moderate income buyer also provides an apartment (granny unit) affordable to someone at 50% of median income.

For new construction, just about any home which is "rear-loaded," e.g. has an alley, with the garage on the alley at the back of the house, can easily have a granny unit over the garage.² A project with 60 lots on 9 acres can easily have 50 of them include granny units, if the project is rear-loaded rather than front-loaded.³ Such a project produces 50 units affordable to those at 50% of median income. The main house is affordable at 100% to 120% of median income, and the whole thing pays impact fees, rather than receives fees.

Here is the math comparing a High Ratio Granny Unit project to present inclusionary policy. A 15% inclusionary project would yield 9 protected affordable units on the same 9 acre site, and the remaining 85% of the units would not be affordable to moderate income families. The alley loaded, High Ratio Granny Unit project yields 5 times as many affordable units, and the main houses are affordable to moderate income households.

1 These numbers are based on units built and sold at Courtside Village in Santa Rosa in 2001.

2 The street scene is also much better with rear-loaded houses than with front-loaded, since the street is not dominated by garage doors as it is in front loaded developments.

3 These numbers are taken from a pending Tentative Map, on flat ground, in Santa Rosa.

***What are High Ratio Granny Units?**

A conventional subdivision of single family detached homes is usually "front loaded," meaning that cars enter the garage from the street in front of the house. In a "rear loaded" neighborhood, the cars enter the garage from an alley behind the house. With rear loaded houses it is easy to build a granny unit above the garage. With front loaded houses, adding a granny unit is problematic. Parking for the granny unit in a rear loaded house is easily accommodated within the width of the lot, right next to the garage. It should also be noted that the lot yield per acre is higher with rear loaded site plans, and the lot improvement costs are lower.

ITEM NO. 9

CITY OF SANTA ROSA
DEPARTMENT OF COMMUNITY DEVELOPMENT
STAFF REPORT FOR PLANNING COMMISSION
March 27, 2003

PROJECT NAME

Amendment of Zoning Code, Article 6

FILE NUMBER

ST01-012

PROJECT PLANNER

Maureen Rich

RECOMMENDATION

Approval

PROPOSAL

Amend Zoning Code, Article 6, Sections 20-03.111 through 20-03.119, Second Dwelling Unit to eliminate discretionary review and public hearing of second dwelling units, in favor of ministerial approval or denial and establish minimum development standards and review procedures for second dwelling units in Santa Rosa.

SUMMARY

This is the second Planning Commission report on the proposal to amend the second dwelling unit ordinance (Article 6, Sections 20-03.111 through 20-03.119).

The purpose of this report is to address the following questions raised by the Commission and/or the public:

1. Can the second dwelling unit ordinance include a statement that public policy may not override CC&R's?
2. What process will be used to deviate from the requirements of the code?
3. Can neighborhood notice be mailed to property owners adjacent to an approved second dwelling unit?
4. What response(s) does the City offer to questions raised by Donald Dakan, Dan Flock and Denise Hill?

The final draft of the proposed ordinance identifies in bold italics, those changes which have been made since the initial review on March 13, 2003.

ITEM NO. 9

CITY OF SANTA ROSA PLANNING COMMISSION

TO: PLANNING COMMISSION
SUBJECT: SECOND DWELLING UNIT ORDINANCE
AGENDA ACTION: RECOMMENDATION FOR APPROVAL

ISSUE(S)

1. Should the Commission recommend to the City Council adoption of the Second Dwelling Unit ordinance as drafted?

HISTORICAL

On March 13, 2003, the Planning Commission opened and closed the public hearing for the proposed amendment of the Zoning Code, Article 6, Second Dwelling Unit. The item was continued in order to address specific questions raised by the public and the Planning Commission.

ANALYSIS

The following questions were presented at the March 13, 2003 Planning Commission meeting.

1. **Can the second dwelling unit ordinance include a statement that public policy may not override CC&R's?**

The following language has been included in Purpose - Section 20-03.111:

"It is not the intent of this ordinance to override lawful use restrictions as set forth in Conditions, Covenants and Restrictions or similar provisions."

2. **What process will the City use to deviate from the requirements where non-conforming conditions may occur, e.g., historic districts?**

Exceptions to the requirements of the Zoning Code may be handled as either a variance or conditional use permit. A variance may not be used to authorize a use or activity that is not authorized by the zoning district regulations for the property. Variances and conditional use permits are discretionary actions that require Planning Commission review.

Variance example: If an existing garage, which doesn't meet setbacks, includes a proposed two story, second dwelling unit which won't meet setbacks, then the applicant would request a variance.

Conditional Use Permit: If a parking reduction is requested then the applicant would request a conditional use permit.

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3. **Should neighborhood notice be mailed to property owners adjacent to an approved second dwelling unit?**

Ministerial actions should not be noticed. Notice is not given for construction of a new, single family dwelling or a second story addition to a single family dwelling. Both of these examples are developments "by right" (ministerial actions) and the surrounding property owners are not notified.

Noticing a neighborhood of a "by-right" permit suggests that public comments are being solicited. This conflicts with the reason and intent of other City notices. Since the notice would likely result in public frustration, the benefit is questionable and not advised.

The spirit of the law is to eliminate the discretion of reviewing the proposed second dwelling unit. Any property owner is granted the right to develop their property with a second dwelling unit just as they could develop a single family residence. Mailing a notice to develop a second dwelling unit would be the same as mailing a notice regarding the construction of a single family dwelling.

4. **How does the City respond to the questions raised in letters submitted by Donald Dakan, Dan Flock and Denise Hill?**

- a. Can the Purpose - Section 20-03.111 refer to neighborhood (singular)?
Yes.
- b. Can Location - Section 20-03.113 also include sidewalks?
This is one of the options that was presented to the Planning Commission. See the March 13, 2003 report, page 5 - Option B.
- c. Can the height of a second dwelling unit be restricted so as not to exceed the height of the primary residence?
This is an option that the Planning Commission may consider; however, it would be more restrictive option than what is proposed and would have the net effect of decreasing the number of second dwelling units constructed. For example, fewer second story dwellings above existing garages would be possible where they might otherwise be appropriate. Staff recommends limiting the height of a second dwelling unit to 27 feet as proposed.
- d. Can second dwellings within historic districts be regulated?
The State Law includes a provision which allows a city to adopt standards to prevent adverse impacts on real property that is listed in the California Register of Historic Places. There are only 2 such listings in Santa Rosa, John Medica and Luther Burbank Gardens.

As drafted, the ordinance specifies that these listings, and the adjacent parcels, may not be developed with a second dwelling unit. Should the State amend the law to include properties listed on a National Register, then the City will amend their ordinance.

ITEM NO. 9

An option that the Commission may wish to consider is a blanket restriction for historic districts as follows:

“A proposed second dwelling unit within any historic district of the City of Santa Rosa, shall not be visible from a public street or public area.”

- e. How does CEQA apply to the development of second dwelling units within historic districts?
The State is mandating that second dwelling units be considered ministerially. CEQA does not apply to ministerial actions.
- f. Can the occupancy of the second dwelling units be limited?
The City does not currently limit the number of people occupying a second dwelling unit. Furthermore it has not been an issue.
- g. Internal conversions should not exceed 30%.
The current ordinance allows for internal conversions up to 45% which may include additions. The proposed ordinance allows for internal conversions up to 45%, but excludes conversions. The Planning Commission may consider a more restrictive option.
- h. Can the required parking be excluded from setback areas?
No. State law requires that “off-street parking shall be permitted in setback area in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions, or that it is not permitted anywhere else in the jurisdiction.”

The second dwelling unit will meet state health safety and fire codes. Access to the unit will be provided consistent with state and local codes.
- i. Can the Architectural Compatibility Section - 20-03.116(F) be modified to reference “compatible” dwellings on adjacent properties?
Yes, the change has been made.
- j. Should the second dwelling unit ordinance apply to condominium projects?
Yes. Unless otherwise superceded by CC&R’s, a second dwelling unit may be permitted if it meets all of the requirements and development standards as specified in the second dwelling unit ordinance.
- k. May the resident of a second dwelling unit have a home occupation?
Yes. Unless otherwise superceded by CC&R’s, a second dwelling unit may contain a home occupation if it meets all of the requirements as specified in Section 20-05.880 Home Occupations.
- l. General comments by the letter writer. *The spirit of the State Law is to allow second dwelling units, by right (as a ministerial action) when the adopted development standards and requirements are met.*
- m. The question did not list specific considerations.

ITEM NO. 9

Attachments

- Planning Commission Report and attachments from March 13, 2003.
- Final Draft (Ordinance)
- Letters (3)
- Resolution

RECOMMENDATION

The Department of Community Development recommends that the Planning Commission recommend to the City Council adoption of the Second Dwelling Unit Ordinance as proposed.

ITEM NO. 11

**CITY OF SANTA ROSA
DEPARTMENT OF COMMUNITY DEVELOPMENT
STAFF REPORT FOR PLANNING COMMISSION
March 13, 2003**

PROJECT NAME

Amendment of Zoning Code, Article 6,
Second Dwelling Unit,
Sections 20-03.111 through 20-03.119

FILE NUMBER

ST01-012

PROJECT PLANNER

Maureen Rich

RECOMMENDATION

Approval

PROPOSAL

Amend Zoning Code, Article 6, Sections 20-03.111 through 20-03.119, Second Dwelling Unit to eliminate discretionary review and public hearing of second dwelling units, in favor of ministerial approval or denial and establish minimum development standards and review procedures for second dwelling units in Santa Rosa.

SUMMARY

On September 29, 2002, the first major revision to the second dwelling unit statute (Government Code §65852.2) was signed into law by the Governor. In general, it states that after July 1, 2003, any second dwelling unit application must be considered through ministerial process, without discretionary review or hearing.

A ministerial action describes an objective decision with no public involvement and requires little, if any, personal, subjective judgement. A ministerial request is granted when it can meet all laws, ordinances, regulations, and statutes. Ministerial actions cannot be appealed.

Conversely, a discretionary action describes a review process that often involves public comment, a substantial level of subjective review and public hearing. Discretionary actions may be appealed.

The new law states that a city may, by ordinance, provide for the creation of second dwelling units. The ordinance may do any of the following:

- A) Designate areas where second units may be permitted which may be based on criteria, including but not limited to, the adequacy of water and sewer services and impact on traffic flow.
- B) Impose standards on second units, including but not limited to, parking, height, setbacks, lot coverage, architectural standards, maximum size and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Places.
- C) Provide that second dwelling units do not exceed the allowable density for the property and that the second unit is a residential use consistent with the General Plan designation and zoning.

ITEM NO. 11

Under the new law, second dwelling units must be reviewed ministerially. Therefore, the ordinance must be written using criteria and measures that are objective in order to address the various physical conditions and scenarios.

Timing is critical for the adoption of this ordinance. If the ordinance is not in effect by July 1, 2003, then any application for a second dwelling unit, submitted on or after July 1, 2003, must be approved or disapproved ministerially without discretionary review or hearing based on the State's minimum requirements (see Government Code § 65852.2(b)).

The approach of this report is to analyze more and less permissive optional standards and the corresponding effects on the City of Santa Rosa.

ITEM NO. 11

CITY OF SANTA ROSA PLANNING COMMISSION

TO: PLANNING COMMISSION
SUBJECT: SECOND DWELLING UNIT ORDINANCE
AGENDA ACTION: RECOMMENDATION FOR APPROVAL

ISSUE(S)

1. Should the Planning Commission recommend to the City Council adoption of the Second Dwelling Unit Ordinance as drafted?

BACKGROUND

1. Historical

In 1986, the City of Santa Rosa introduced Zoning Code §20.03.367 allowing for the development of second dwelling units through the Conditional Use Permit discretionary review process conducted by the Planning Commission.

In the mid 1990's, the State declared that second dwelling units provide a valuable form of housing for family members, students, senior citizens, in-home health care providers, the disabled, and others at below market prices within existing neighborhoods. The intent of the State's declaration was to ease the discretionary review process through codification.

On September 29, 2002, the first major revision to the second dwelling unit statute, Government Code §65852.2, was signed into law by the Governor. The law states that any application for a second dwelling unit received after July 1, 2003, shall be considered by ministerial process, without discretionary review or hearing. The law identifies which standards a city may apply to the review of second dwelling units.

ANALYSIS

1. Project Description

By law, a local agency must adopt an ordinance that removes all discretionary review of a request for second dwelling unit. Aside from the removal of the discretionary review process, a proposed reduction in the height and changes in setbacks within a -PD District, the ordinance has remained very similar to the existing ordinance.

What follows is a section-by-section review of the new ordinance. New text is identified by italic print and text to be eliminated has been struck. A brief discussion follows each section as well as a discussion of the options (more permissive versus more restrictive) for the Planning Commission to consider that may either make it easier or more difficult to develop second dwelling units and staff's recommendation.

ITEM NO. 11

Article 6 - Second Dwelling Unit

20-03.111 Purpose.

The purpose of this article is to *comply with amendments made in 2002, to State Law §65852.2 which provides for City's to set standards for the development of second dwelling units so as to increase the supply of smaller and affordable housing while ensuring that they remain dwelling units and rental housing units by allowing second dwelling units to be developed on certain lots which contain only a single-family dwelling and to establish design and development standards for second dwelling units to ensure that they are compatible with existing neighborhoods.*

Discussion: The purpose statement has been simplified. Reference to establishment of design standards has been eliminated since design is subjective and requires discretionary review.

Options: Not applicable.

Recommendation: Adopt the "Purpose" section as proposed.

20-03.112 Definitions.

(A) Second Dwelling Unit: Any residential dwelling unit which provides complete independent living facilities on the same parcel as a legal single family residence and including, but not limited to, the permanent provisions for living, sleeping, eating, cooking and sanitation. A second dwelling unit also includes efficiency units and manufactured homes. A second dwelling unit may be considered a residential use that is consistent with the existing general plan and zoning designation for the lot. Second dwelling units are not "accessory uses" as defined in Article 4.1 of Chapter 20-05. A second dwelling unit is a small but separate, complete housekeeping unit with kitchen, sleeping, and full bathroom facilities which is part of, an extension to, or on the same lot as a detached single family dwelling.

- (1) Efficiency Unit: A separate living space with a minimum floor area of 150 square feet intended for occupancy by no more than two persons which contains partial kitchen and bathroom facilities.*
- (2) Manufactured home: A transportable structure which in the traveling mode is 8 feet or more in width and 40 feet or more in length and is a minimum of 320 square feet and which is built on a permanent chassis and is designed to be used as a dwelling with or without a permanent foundation.*
- (3) Neighborhood: An area commonly identified as such in planning documents and among individuals who reside and work within close proximity.*

Discussion: State law requires that the definition of second dwelling unit include efficiency units and manufactured housing. There is no relief from this requirement and the proposed ordinance has been revised accordingly. The state's definitions, as found in Government Code §65852.2 (i) 1-4, has been used in the proposed ordinance.

Options: Not applicable.

Recommendation: Adopt the "Definitions" section as proposed.

20-03.113 Location.

ITEM NO. 11

(A) ~~★ One second dwelling unit may be allowed located on any residentially zoned lot that principally allow single family dwellings and any lot whose zoning permits residential units and which is either undeveloped or contains only a legal single-family detached dwelling.~~

(B) Second dwelling units shall not be allowed where roadways, public utilities and services are inadequate.

(C) *Second dwelling units are not required to meet the density requirements of the General Plan, but shall otherwise be consistent with General Plan text and diagrams.*

(D) *No second dwelling unit may be approved if located on, or adjacent to, real property that is listed in the California Register of Historic Places.*

Discussion:

- (1) The existing code has been clarified. If the lot on which a second dwelling unit is to be located is already developed with a single family residence, which residence must be legal. It is not in the City's interest to allow for the construction of a second unit if the main unit is illegal.
- (2) The city may impose standards including, but not limited to, the adequacy of water and sewer and the impact of second dwelling units on traffic flow.
- (3) Under the State's law, second dwelling units may be required to meet General Plan density requirements. However, the City's policy has been to allow second dwelling units without General Plan density restriction.
- (4) The new law gives local agencies the ability to regulate second dwelling units when they could impact a historic property, as listed on the California Register of Historic Places. The City of Santa Rosa has two such listings, John Medica Gardens (#939) and Luther Burbank Gardens (#234). The proposed ordinance for second dwelling units eliminates the potential for construction of a second dwelling unit on these (and adjacent) properties.

Options:

- (A) None.
- (B) More permissive: Eliminate the requirement for adequate roadways. This could result in inadequate access to the second dwelling unit and result in a serious constraint to emergency service provisions.
More restrictive: Require that there be adequate roadways AND sidewalks.
- (C) More permissive: None.
More restrictive: Require that all second dwelling units meet the General Plan density requirement. The result of this option would be a significant reduction in the number of second dwelling units in the City.
- (D) More permissive: Eliminate the restriction on adjacent lots. Without adequate discretionary review, staff concludes that the permissive approach could result in a significant impact to a historic property. The more permissive approach is not recommended.
More restrictive: Consider increasing the distance of second dwellings to a historically listed property, imposing increased setback standards, or decreasing second dwelling unit height to single story maximum.

Recommendation: Adopt the "Location" section as proposed.

20.03.114 Conditional use permit. Permitting Procedures.

ITEM NO. 11

Any application for second dwelling unit that meets the location and development standards, contained in this code, shall be approved ministerially without discretionary review or public hearing. A conditional use permit approved by the Planning Commission shall be required for all second dwelling units. Second dwelling units approved by conditional use permit prior to this amendment shall be considered legal nonconforming uses.

Discussion: New state law removes the discretionary review and hearing process. Local agencies are required to ministerially review second dwelling units. The proposed process incorporates review of a second dwelling unit with an application for building permit.

Options: Not applicable.

Recommendations: Adopt the "Permitting Procedures" section as proposed.

20.03.115 Procedure for approval. Submittal Requirements and Application Processing.

~~Applicants for second dwelling units shall follow the following procedure for approval:~~

~~(A) Step One- Submittal--Application: The application package Applications for a second dwelling unit permit shall be submitted to the Department of Community Development concurrent with the submittal of an application for building permit. In addition to the standard submittal requirements for a building permit, the second dwelling unit application package shall include: accompanied by the required fees, plans, and elevations. showing the proposed second dwelling unit and its relation to the principal dwelling, descriptions of building materials, landscaping and exterior finishes to be used, parking to be provided, and any other information required by the Department to determine whether the proposed second dwelling unit conforms to all requirements of this article.~~

- (1) Plot plan (drawn to scale): Dimension the perimeter of parcel on which the second dwelling will be located. Indicate the location and dimensioned setbacks of all existing and proposed structures on the project site and structures located within 50 feet of the project site. All easements, building envelopes, and special requirements of the subdivision as shown on the final map and improvement plans shall be included. Provide average slope calculations for the project site.*
- (2) Floor Plans: Each room shall be dimensioned and the resulting floor area calculation included. The use of each room shall be identified. The size and location of all windows and doors shall be clearly depicted.*
- (3) Elevations: north, south, east and west elevations which show all openings, exterior finishes, original and finish grades, stepped footing outline, roof pitch, materials and color board for the existing residence and the proposed second dwelling unit.*
- (4) Cross Section: Provide building cross sections including, but not limited to: structural wall elements, roof, foundation, fireplace and any other sections necessary to illustrate earth-to-wood clearances and floor to ceiling heights.*
- (5) Color photographs of the site and adjacent properties. The photos shall be taken from each of the property lines of the project site to show the project site and adjacent sites. Label each photograph and reference to a separate site plan indicating the location and direction of the photograph.*
- (6) Deed restriction completed as required, signed and ready for recordation.*

ITEM NO. 11

(B) Step Two -- ~~Conformance. Issuance.~~ The Department of Community Development shall ~~issue a second dwelling unit building permit if it determine if the proposed second dwelling unit conforms to the specific standards contained in §20.03.116 Development Standards all requirements of this article.~~ If the proposal conforms, then the Department shall schedule the second unit application on the earliest available Planning Commission consent calendar for approval. Not less than 10 days prior to the Planning Commission meeting at which time the application will be considered, the Department shall notify all owners of property within 300 feet of the subject property that the second unit application has been filed and that it conforms to all requirements of this article and is therefore scheduled for approval by the Planning Commission on the selected date. The Department shall also inform the property owners of their right to object to the proposed approval of the application either in writing or in person at or before the Planning Commission meeting on which the application will be considered on the consent calendar.

— (C) Step Three--Consent Calendar. If the second unit application is not objected to, then the Planning Commission by resolution will approve the conditional use permit. If any objection is received, then the Planning Commission shall not act on the application on the consent calendar but shall instead direct the Department of Community Development to set the matter for a future public hearing on the earliest possible Planning Commission agenda.

— (D) Step Four--Public Hearing (If Necessary). If step four is necessary, the Department of Community Development shall schedule the second unit application for a public hearing before the Planning Commission and shall prepare a written agenda Staff report for the item. All property owners within 300 feet of the subject property shall be notified of the public hearing. After the public hearing, the Planning Commission, prior to approving the conditional use permit, must determine that the proposed second dwelling unit conforms to all requirements of this article.

Discussion: Since the State law is eliminating the local agency's discretionary review¹ authority for second dwelling units, the submittal requirements must be specific and complete in order to perform the ministerial review. The second dwelling unit will be processed with the application for a building permit (also a ministerial function).

Options: Not applicable.

Recommendations: Adopt the "Submittal and Application Processing" section as proposed.

Section 20.03.116 ~~Design and Development Standards.~~

A second dwelling unit permit will only be issued if it complies ~~All second dwelling units shall comply with the following design and development standards:~~

(A) *Setbacks:*

- (1) *Residential Districts: The main dwelling unit setbacks, based on the zoning district in which it is located, shall also apply to the second dwelling unit. No second dwelling unit shall be closer to the main dwelling (on the same lot) than that permitted by the Uniform*

¹ A project that requires exercising judgement or deliberation before a public agency or body. This is distinguished from situations where the agency or body merely determines whether or not the request conforms with applicable statutes, ordinances or regulations.

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Building Code. A second dwelling unit shall not be closer than 10 feet from the main building on the same lot or adjacent lot. A second dwelling unit shall be located within 100 feet of the main dwelling unit.

- (2) *Second Dwelling Unit Setbacks in -PD Districts in effect on or before October 4, 1985, and without specified setbacks identified in a Policy Statement or Development Plan shall maintain a rear setback of 15 feet, an interior side yard setback of 5 feet for a one-story portion and 10 feet for a two-story portion and an exterior side yard setback of 15 feet*

~~Requirements. All yards, building height, distance between buildings, and lot coverage standards of the zone in which the property proposed for a second dwelling unit is located shall apply. In zones where no standards are specified, the Planning Commission shall have the authority to establish reasonable standards for yards, building height, distance between buildings, and lot coverage.~~

Discussion: The Zoning Code went through a significant update in the mid 1980's. During this update, the setbacks for R-1 Districts were enlarged, for example the rear yard setback went from five to 15 feet. The result was to make many residences (which previously complied with the smaller setbacks) nonconforming, principally, residences in the Junior College, West End and Burbank -PD neighborhoods. To remedy the problem, the City added a "grandfather" clause to the Zoning Code that allows the smaller setbacks (i.e., 5 foot rear yard) in these -PD neighborhoods which were in effect on or before the Zoning Code change which occurred on 10/4/1985.

The JC Neighborhood Association is requesting that the setbacks for second dwelling units be the same for both the -PD Districts created prior to 10/4/1985 and the R-1-6 District. With a larger setback, the privacy of existing units will be better preserved. The downside to a larger setback may be that fewer second dwelling units may be constructed due to the difficulties of meeting the larger setbacks.

The requirement for the 100-foot maximum separation between the main dwelling and the second dwelling unit is to insure that the activities within the second dwelling unit do not go unnoticed by the owner of the property. One hundred feet approximates the depth of a standard R-1-6 lot.

Options:

More permissive: Eliminate the proposed Second Dwelling Unit Setbacks in -PD Districts in order to remove obstacles for second dwelling unit development.

More restrictive: Increase setback requirements beyond that which is proposed.

The requirement to construct a second dwelling unit within 100 feet of the main unit will not impact the potential creation of second dwelling units. The distance may be increased, decreased or eliminated by the Planning Commission without impact to the number of units constructed.

Recommendations: Adopt the setback section including the increased setbacks in -PD districts created on or before 10/4/1985.

(B) Unit Size.

- (1) No newly constructed second dwelling unit may have more than one bedroom, nor contain a gross floor area in excess of 700 square feet. *Efficiency units shall not contain less than 150 square feet.*

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- (2) Internal Conversion: A second dwelling unit created by the internal conversion of an existing single family dwelling shall not occupy more than 45 percent of the ~~total~~ *habitable* floor area of the building, ~~including any proposed addition, but,~~ excluding the garage area.

Discussion: State law requires a local agency to include efficiency units in the definition of second dwelling unit. The proposed ordinance includes a minimum square footage consistent with the requirement.

As proposed, only the habitable floor area of an existing building can be considered when calculating the percentage of internal conversion. This eliminates the potential to develop a large duplex-type residence without proper discretionary review. Currently, the code allows proposed additions to be included. If additions were allowed, an existing 1,300 square foot home with a 2,000 square foot addition could potentially result in a second dwelling unit of 1,485 square feet and a main unit of 1,815 square feet.

Options:

More permissive: Allow a higher percentage (than 45%) of the existing residence to be converted to second dwelling unit.

More restrictive: Lower the percentage of unit that may be converted.

Recommendations: Adopt the unit size as proposed.

*(C) **Height:** A second dwelling unit shall not exceed two stories. The maximum building height for a second dwelling unit is 27 feet.*

Discussion: During recent review of a second dwelling unit appeal, located on Sunshine Avenue, the City Council suggested that the allowable height of second dwelling units be reduced to 25 feet to insure that sites do not become dominated visually by the second dwelling unit.

Staff has reviewed the City Council's height suggestion with the building division and determined that 25 feet would be possible in most instances; however, on sloped lots it would be best to extend the height to 27 feet to allow flexibility in roof pitch. It is important to note, that aside from the recent height issue encountered on Sunshine Avenue, height does not generally generate neighborhood concerns.

Given that review will be going from discretionary to ministerial, a reduced building height would certainly lessen any potential issue of visual dominance. Restricting height should not affect the number of second units developed.

Options:

More permissive: Leave building height of 35 feet as is.

More restrictive: Decrease the building height to 27 feet.

Recommendations: Adopt the height section as proposed.

*(D) **Lot Coverage:** A second dwelling unit shall adhere to the lot coverage requirements applicable to the main dwelling unit.*

Discussion: No change is proposed.

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Option:

More permissive: Increase the amount of lot that may be covered by residences.

More restrictive: Decrease the amount of lot that may be covered by residences.

Recommendation: Adopt the lot coverage section as proposed.

(E) Off-Street Parking: The second dwelling unit ~~must be provided with~~ *shall provide* one more off-street parking space than required for a single-family dwelling. This additional parking space may be uncovered, ~~and compact, and tandem~~ *and if located outside within the front yard setback when located in the driveway. If there is no on-street parking directly in front of the lot to be developed with a second dwelling unit, then the additional parking space shall be located outside any setback but may be compact and uncovered.* ~~(The requirement for an additional parking space may be waived by the Planning Commission if it finds that: (1) adequate on-street parking is available adjacent to the property; or (2) on-site parking for the second dwelling unit is not needed.~~

Discussion: According to the State:

"Parking requirements for second units shall not exceed one parking space per unit or per bedroom. Additional parking may be required if a finding is made that additional parking is needed to serve the second dwelling unit and is consistent with existing neighborhood standards applicable to the existing neighborhood. Off-street parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topography or fire and life safety conditions, or that it is not permitted anywhere else in the jurisdiction."

The parking requirement for second dwelling units is a big contributor in determining the ease at which second dwelling units may be developed. The new ordinance relaxes the standard by allowing parking in the front setback and within the driveway. This will not impact fire and life safety.

A new requirement for parking is proposed that will apply to situations where there is an absence of on-street parking directly in front of the site. The new ordinance requires parking (uncovered or compact) on-site and outside any setback. The new requirement would apply to situations including but not limited to cul-de-sac lots, flag lots and lots fronting streets where parking is not provided.

Options:

More permissive: Allow parking within a setback regardless of available on-street parking.

More restrictive: Require the additional parking space outside any setback regardless of availability of on-street parking. The effect of this stricter requirement would be to reduce the number of second dwelling units constructed.

Recommendation: Adopt the parking section as proposed.

(F) Architectural Compatibility: Design. The second dwelling ~~family residential~~ unit shall ~~be incorporate the same or similar architectural features, building materials and colors as the main dwelling unit or dwellings located on adjacent properties. ; the design of a second dwelling unit must be aesthetically compatible with the existing primary structure and the surrounding neighborhood. Compatibility with the existing primary structure includes coordination of colors, materials, roofing, other architectural features, and landscaping, designed so that the appearance of the site remains that of a single-family residence.~~

ITEM NO. 11

Discussion: The State law allows a local agency to conduct architectural review, traditionally a discretionary/subjective judgement process. It is rather contradictory for the state to provide for architectural review, limited through ministerial process. What this means is that architectural requirements must be stated objectively; the second dwelling either meets the architectural requirements or not. The proposed ordinance, to the extent possible, requires a second dwelling unit to be the same or similar architectural features, colors and materials in order to blend with the surrounding residences or the existing residence on-site.

Options:

More permissive: Eliminate architectural compatibility section. This would allow the use of any residence design that meets building code to be constructed without the use of the same or similar materials, colors, and features. This would not increase the number of second dwelling units, but could decrease the compatibility of structures, especially within historic neighborhoods.

More restrictive: Any requirement applied to this section must be objectively stated, i.e., the unit does or does not meet the criteria. No subjectivity should be inherent. NOTE: it may not be desirable to match the existing on-site single family residence if it isn't the paradigm for residential development.

Recommendation: Adopt the architectural compatibility section as proposed.

G) Privacy: ~~Insofar as possible, any new~~ Any window or door of a 2nd story second dwelling unit shall utilize techniques to lessen the privacy impacts onto adjacent properties. These techniques may include, use of obscured glazing, window placement above eye level, windows and doors located toward the existing on-site residence or screening treatments. ~~entrances, to an attached second unit shall be located on the side or in the rear of the building. The location and orientation of a second unit may not materially reduce the privacy otherwise enjoyed by residents of adjoining properties. The shape and siting of a second dwelling unit, and especially of any portions thereof which exceed one story in height, shall be designed and oriented so as to minimize the blocking of views and direct sunlight from nearby lots and from other residential facilities in the surrounding neighborhood. The Planning Commission must consider, but is not limited to considering, the placement of windows, decks and balconies, landscape screening, and height/number of stories, in determining if privacy will be materially reduced.~~

Discussion: See discussion - Architectural Review.

Options:

More permissive: Eliminate the section and allow second dwelling units to develop without privacy concerns.

More restrictive: Writing objective requirements that protect privacy is extremely difficult. The requirement can't be so restrictive that it makes it impossible to meet building code requirements.

Recommendation: Adopt the privacy section as proposed.

(H) Permanent Foundation: A permanent foundation shall be required for all second dwelling units.

Discussion: No changes have been made.

(I) Existing Development: A single-family dwelling must exist on the lot or shall be constructed on the lot in conjunction with the construction of the second dwelling unit. ~~Subdivision. No subdivision of land or air rights shall be allowed.~~

ITEM NO. 11

Discussion: The City's Subdivision Ordinance establishes the guidelines and regulations for the creation of new lots. Therefore, the statement related to subdivision exclusion has been removed.

(J) Number per Lot: No more than A maximum of one second dwelling unit shall be permitted may be located on any lot.

Discussion: The language has been revised slightly, without any change in meaning.

(K) Occupancy. The property is and will shall be the primary residence of the property owner. The owner may occupy either the primary main dwelling unit or second dwelling unit as their principal residence.

Discussion: The language has been revised slightly, without any change in meaning.

Options:

More permissive: The occupancy requirement could be eliminated with the goal of increasing the number of second dwelling units. This would also increase the number of absentee owners and potential for nuisance.

More restrictive: Not applicable.

Recommendation: Maintain owner occupancy requirement to insure maximum preservation of property and lower potential for nuisance.

Section 20.03.117 Findings for approval:

~~Before granting a conditional use permit for a second dwelling unit, the Planning Commission shall make the following findings:~~

- ~~(A) The second dwelling unit meets all required standards identified in this article;~~
- ~~(B) The second dwelling unit is compatible in appearance and character with the primary single family residence and with the surrounding neighborhood;~~
- ~~(C) Public utilities and services are adequate to serve both dwellings;~~
- ~~(D) In order to encourage the development of housing units for disabled individuals and persons with limited mobility, the Planning Commission may make a finding that reasonable deviation from the stated conditions is necessary to install features that facilitate access and mobility for disabled persons.~~

Discussion: Approval findings are not required for ministerial actions.

Section 20.03.118 117 Deed Restrictions.

Before obtaining a second dwelling unit building permit, the property owner shall file with the County Recorder a declaration or agreement of restrictions, which has been approved by the City Attorney as to its form and content, containing a reference to the deed under which the property was acquired by the owner and stating that:

(A) The second dwelling unit shall not be sold separately;

(B) The second dwelling unit is restricted to the *maximum size allowed per the development standards in Section 20.03.116 approved by the conditional use permit allowing the unit;*

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(C) The ~~conditional use permit allowing the second dwelling unit shall be in effect~~ *considered legal* only so long as either the primary residence, or the second dwelling unit, is occupied by the owner of record of the property;

(D) The restrictions shall be binding upon any successor in ownership of the property and lack of compliance shall result in *legal action against the property owner*. ~~proceedings to revoke the conditional use permit.~~

Discussion: The language has been revised slightly, without any change in meaning.

2. General Plan

The proposed ordinance will comply with the General Plan Housing Element. The following policy relates specifically to second dwelling units:

H-C-7: Promote development of second units. Discuss this option with residential developers during initial development application meetings.

3. Environmental Review

The Zoning Code Text Amendment is covered by CEQA Statutory Exemption 15282(i) which exempts the adoption of ordinances, pertaining to second dwelling units in a single family or multifamily residential zone, in order to implement the provisions of Sections 65852.2 of the Government Code.

4. Issues

Time Constraints: On September 29, 2002, the governor signed the new law which eliminates the current discretionary review process in favor of a ministerial process. The law states that unless a local agency has their own ordinance adopted by July 1, 2003, any application for second dwelling unit will only be required to meet the minimum standards contained in the new adopted law §65852.2 (b)(1)(A-I). If the City of Santa Rosa wishes to have their own standards in place, the City Council must adopt the second dwelling unit ordinance by May 27, 2003 in order to be in effect on July 1, 2003.

Attachments

- Government Code 65852.2
- Existing Zoning Code Article 6, Second Dwelling Unit
- Proposed Zoning Code Article 6, Second Dwelling Unit
- Declaration of Restrictions
- Planning Commission Resolution
- Letter from JC Neighborhood Association

RECOMMENDATION

The Department of Community Development recommends that the Planning Commission recommend to the City Council, amendment to Article 6 of the Zoning Code, Section 20-03.111 through 20-03.119 titled Second Dwelling Unit.

Six Steps to Getting Local Government Approvals

Community opposition continues to plague proposals for new housing and services for low-income people. While every local opposition conflict is different and there are no “silver bullets,” this page presents a proactive and collaborative approach that has been successfully used in the San Francisco Bay Area over the last several years to get needed local government approvals.

In a nutshell, the approach consists of six steps:

1. Working with local advocates, the development team meets early in the development process to research, assess and plan in five key areas.
2. Prepare a political strategy which coordinates all your work towards getting the votes you need.
3. Prepare a strategy to build active community support for your proposal.
4. Prepare a strategy to work through concerns of community members and to deal with active opposition.
5. Prepare a strategy to protect and use your legal rights.
6. Prepare a public relations/media strategy to send your message to decision-makers and the public.

Instead of doing the same outreach for every proposal or waiting and seeing what will happen, this individual planning approach is like a “due diligence” process in which you consider and make deliberate decisions about five key areas that may be important for every development proposal. Conducting this planning process is not the same as deciding to adopt a high visibility entry with early notification of neighbors. Rather, whether to notify neighbors (and, if so, how and when) is one decision to make in this planning process. (For more information about each step, look for page references to *Building Inclusive Community: Tools to Create Support for Affordable Housing* (HomeBase 1996), hereafter “BIC”.)

In addition to this work, we recommend you participate in on-going, community-wide strategies to improve the political climate for affordable housing and services in your community, e.g. tenant organizing, voter registration, participating in the development of local housing policy, promoting pro-housing candidates in local elections, and promoting the enforcement of fair housing laws.

1 Planning meetings to research, assess and plan strategies in five key areas.

(BIC, pp. 21 - 30)

Schedule two or more meetings of the entire development team together with local advocates and assign responsibility for organizing the meetings (e.g. inviting key people) to a staff member.

At the first meeting, assess the following:

- Your organization’s reputation, capacity to attract broad community support for its work, and its previous experience in dealing with local government, opponents, and the media.
- What local government approvals are required, who will decide, what is the process and criteria for decisions, and an expected timeline.
- Local government’s current knowledge of and support for affordable housing, your organization’s work, and the current proposal.

- Full analysis of the neighborhood surrounding the proposed site (history, problems, organizations, assets, etc.)
- Likely concerns neighbors might have about your proposal, the neighborhood’s experience with similar programs and its potential for organized opposition.
- Potential legal issues associated with your development proposal, including your organization’s and clients’ legal rights.
- The regional and local media’s approach to your work and clients.

First, make sure your development plan includes at least two meetings to plan how you will obtain the local government approvals you need.

Based on these assessments, at the second and later meetings determine: (a) your strategies toward local government, potential supporters, potential opponents, legal issues and the media (see steps 2-5); (b) staffing required to implement your strategies; and, (c) any consequences for your proposal’s timeline, funding needs, or site selection.

- Each strategy should have a clear plan of actions: who will do what, when, how and with whom.
- Efforts to implement these five strategies will be going on simultaneously.
- Timing issues are critical and must be decided after consultation with persons most familiar with local politics and the relevant neighborhood.
- Expect to change and improvise your plans as you go along. You won’t regret your planning because it will help you manage the process and avoid some fire drills and surprises.
- Most importantly, draw on the collective experience of others to gain further insight into the strategies for community acceptance.

2 Prepare a political strategy.

(BIC, pp. 27 & 29; 31 - 32)

- Get to know your local government’s players and relevant policies. There are “key leaders” in every community, but they don’t always have the same jobs or titles. To find them always ask:

“Who else should I talk with about this?”

- Identify solid supporters, committed opponents, and uncertain votes on your proposal.

If the crucial vote were taken tonight, do you know who would vote for and against your proposal?

- Determine education and advocacy efforts needed to keep supporters, neutralize opponents, and win uncertain votes.
- Coordinate your efforts with supporters, concerned community members and with the media to get the votes you need.
- Document everything and tell your best story at public hearings. Usually something like: “We’re a professional, community-based group with significant community support meeting a critical need, and we’ve done everything we can to reasonably respond to neighbors’ legitimate concerns.”

3 Prepare a strategy to build public support.

(BIC, pp. 31 - 40)

Active, vocal community support for your proposal will help you get political support, counter your opponents, tell your story to the media and, when appropriate, say hard things that developers usually do not want to say.

- Develop solid support for the proposal (at least in the broader community) before contacting potential opponents.

Don’t fall into the trap of spending all of your time and energy responding to opponents.

- Identify and prioritize actual and potential supporters, including tactical allies. Think widely about your potential allies.
- Plan recruitment of supporters and what you want them to do for you.
- Organize and support your allies with background information, housing tours and up-to-date information.

- Mobilize supporters at critical points (e.g. using a database and fax sheets.)
- Keep them informed and encouraged.

4 Prepare a strategy to work through community issues.

(BIC, pp. 41 - 58)

- Notification and community outreach decisions should be designed to surface and deal effectively with legitimate concerns and for positive presentation of the proposal, not to create an open forum for opponents to organize themselves against you.
- Consider alternative methods for community outreach (e.g. door-to-door canvassing, open-house forums or small house meetings) instead of the large open community meetings.

Only when you understand why a person opposes, can you select the best response.

- Use an issue-based strategy for working through local community concerns.
- Find out the probable basis of their concerns before fashioning a response (e.g. misinformation, fears about impacts, expectation to participate, legitimate conflicts of interest, prejudice, or issues unrelated to your proposal.)
- Prepare appropriate responses to each kind of concern (e.g. education, reassurance by trusted authority, appropriate forum for participation, negotiation, clarifying legitimate from illegitimate issues.)
- Peel away layers of opposition and their issues to leave only “unreasonable” opponents.

5 Prepare a legal strategy.

(BIC, pp. 59 - 67)

- Identify the legal rights of your organization and your prospective tenants/clients and learn how to spot potential legal violations.
- If your proposal is likely to encounter illegal discrimination or

raise complex legal issues, contact legal assistance immediately to learn what you should do now to protect your rights, and how and when to get further legal assistance.

Learn to assert your legal rights without litigation.

- Work with legal advocates to identify how to protect and assert your legal rights without litigation, e.g. by educating the city attorney early in the process.
- Keep records of all statements, flyers, etc. that may be evidence of discrimination.

6 Prepare a public relations/ media strategy.

(BIC, pp. 69 - 70)

Before you get any media coverage on a proposal, decide if you want to generate media coverage (proactive strategy) or if you want to be able to respond effectively to any media coverage you receive (reactive approach).

- Designate and prepare spokesperson(s) including former clients and supporters.
- Develop your message(s) and alternative stories for your target audiences (e.g. decision-makers).
- Prepare brief, easily-faxable, fact sheets about your organization, the proposal, your supporters, your efforts to resolve legitimate community concerns and other information to support your message(s) and alternative stories.
- Invite reporters for a tour of your existing facilities and to meet your staff and clients.

At the very least, select and prepare a media spokesperson, your message and some easily faxed information.

- Follow-up on any coverage you receive with thank you’s and corrections.
- Develop on-going relationships with media (to the degree your resources allow).

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August 6, 2003

MEMORANDUM FOR: Planning Directors and Interested Parties

FROM: 
Cathy E. Creswell, Deputy Director
Division of Housing Policy Development

SUBJECT: **Second-Unit Legislation Effective January 1, 2003
and July 1, 2003**

AB 1866 (Chapter 1062, Statutes of 2002) amends two sections of Government Code to encourage the creation of second-units, generally as follows:

1. *Section 65852.2 (second-unit law)* – Amendments require local governments with a local second-unit ordinance to ministerially consider second-unit applications as of July 1, 2003; and local governments without a local second-unit ordinance or a local ordinance not in compliance with subsections (a) or (c) of second-unit law should ministerially consider second-unit applications in accordance with State standards, established in subsection (b), as of January 1, 2003.
2. *Section 65583.1 (a portion of State housing element law)* – Amendments clarify existing housing element law to allow identification of realistic capacity for second-units in addressing a locality's share of the regional housing need. The identification of realistic capacity should be based on the development trends of second-units in the previous housing element planning period and other relevant factors. These amendments were effective as of January 1, 2003.

The following attachments are provided to inform localities of Chapter 1062 and to assist in evaluating how these new provisions of State law affect communities. This memo supplements prior technical assistance issued by the Department of Housing and Community Development (Department) on second-unit law. A copy of the legislation can be found on the Department's website at www.hcd.ca.gov. You may obtain copies of published bills from the 2002 session from the Legislative Bill Room at (916) 445-2323 or from the Senate's website at: www.senate.ca.gov. If you have any questions or would like additional information, please contact Paul Mc Dougall, of our staff, at (916) 445-4728.

Attachments

Second Unit Law as Amended by
Chapter 1062, Statutes of 2002
(Assembly Bill 1866)

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ATTACHMENT 1

Government Code Section 65852.2

State Second Unit Law

Chapter 1062, Statutes of 2002

(Assembly Bill 1866)

A. IMPLEMENTATION DISCUSSION FOR SECOND UNIT LAW GOVERNMENT CODE SECTION 65852.2

Introduction

Second-units (i.e., in-law apartments, granny flats, or accessory apartments) provide an important source of affordable housing. By promoting the development of second-units, a community may ease a rental housing deficit, maximize limited land resources and existing infrastructure and assist low and moderate-income homeowners with supplemental income. Second-units can increase the property tax base and contribute to the local affordable housing stock. Government Code Section 65852.2 (a.k.a. second-unit law) was enacted in 1982 and has been amended four times (1986, 1990, 1994 and 2002) to encourage the creation of second-units while maintaining local flexibility for unique circumstances and conditions. Local governments may allow for the creation of second-units in residential zones, set development standards (i.e., height, setbacks, lot coverage), require minimum unit sizes and establish parking requirements. However, State standards apply if localities do not adopt a second-unit ordinance in accordance with the intent of second-unit law and subsections (a) or (c).

Chapter 1062 amends second-unit law to require ministerial consideration of second-unit applications to encourage the creation of second-units. For the text of Chapter 1062 (AB 1866) relating to Government Code Section 65852.2, see the second section of this attachment, titled “Changes to Government Code Section 65852.2”. Following is a discussion of the new legislation to assist localities in carrying out the provisions of Chapter 1062:

Intent of Second-Unit Law (Government Code Section 65852.150)

The preparation, adoption, amendment and implementation of local second-unit ordinances should be carried out consistent with Government Code Section 65852.150:

The Legislature finds and declares that second units are a valuable form of housing in California. Second units provide housing for family members, students, the elderly, in-home health care providers, the disabled, and others, at below market prices within existing neighborhoods. Homeowners who create second units benefit from added income, and an increased sense of security.

It is the intent of the Legislature that any second-unit ordinances adopted by local agencies have the effect of providing for the creation of second units and that provisions in these ordinances relating to matters including unit size, parking, fees and other requirements, are not so arbitrary, excessive, or burdensome so as to unreasonably restrict the ability of homeowners to create second units in zones in which they are authorized by local ordinance.

When Does a Local Second-Unit Ordinance Apply versus State Standards?

Second-unit law contains provisions to guide the adoption of a local ordinance (subsections (a) and (c-g)) and describes State standards that apply in the absence of a local ordinance (subsection (b)). When a local second-unit ordinance is enacted in accordance with subsections (a) or (c), the local ordinance provides the criteria for approving and denying second-unit applications. In the absence of a local second-unit ordinance in accordance with subsection (a) or (c), the State standards contained in subsection (b) of Government Code Section 65852.2 establish the criteria for approving and denying second-unit applications. While the State standards, under subsection (b), do not necessarily apply to the preparation or update of a local ordinance, they are appropriate to use as a guideline.

Does a Locality Have Flexibility in Adopting a Local Second-Unit Ordinance?

Second-unit law was created and amended within the context of providing "...a minimum of limitation...", so localities "...may exercise the maximum degree of control over local zoning matters..." (Government Code 65800). Chapter 1062 requires localities to consider applications for the development of second-units ministerially with the intent to create second-units and not constrain their development. Second-unit law provides local flexibility to manage the opportunity for creating second-units. For example, Government Code Section 65852.2(a)(1) provides that:

65852.2.(a)(1) Any local agency may, by ordinance, provide for the creation of second units in single-family and multifamily residential zones. The ordinance may do any of the following:

- (A) Designate areas within the jurisdiction of the local agency where second units may be permitted. The designation of areas may be based on criteria that may include, but are not limited to, the adequacy of water and sewer services and the impact of second units on traffic flow.*
- (B) Impose standards on second units that include, but are not limited to, parking, height, setback, lot coverage, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Places.*
- (C) Provide that second units do not exceed the allowable density for the lot upon which the second unit is located, and that second units are a residential use that is consistent with the existing general plan and zoning designation for the lot.*

A local government may apply quantifiable, fixed and objective standards, such as height, setback, and lot coverage requirements so the second-unit will be compatible with other structures in the neighborhood. A local government may designate areas appropriate for second-units based on criteria such as the adequacy of water and sewer services and the impact of second-units on traffic flow. At the same time, a locality must adopt an ordinance with the intent of facilitating the development of second-units in appropriate residential zones without arbitrary, excessive, or burdensome provisions and requirements.

Under limited circumstances, a locality may prohibit the development of second-units in single-family or multifamily zones (Government Code Section 65852.2(c)). This prohibition may only be enacted if a locality adopts formal written findings based on substantial evidence identifying the adverse impact of second-units on the public health, safety, and welfare and acknowledging such action may limit housing opportunities in the region (Section 65852.2(c)). Prior to making findings of specific adverse impact, the agency should explore feasible alternatives to mitigate and avoid the impact. Written findings should also acknowledge efforts to adopt an ordinance consistent with the intent of second-unit law.

A local government may also establish reasonable minimum and maximum unit size requirements for both attached and detached second-units according to Government Code Section 65852.2(d). Minimum and maximum unit sizes should be reasonable and should not arbitrarily and excessively restrict the development of second-units. For example, a maximum unit size of 400 square feet might be unduly restrictive on minimum lot sizes of 7,000 square feet, barring unusual circumstances, and would restrict the development of second-units. Minimum unit sizes should also uphold health and safety standards.

Also, localities should ensure parking requirements are consistent with standards set forth in subsection (e). This subsection limits parking requirements to one parking space per unit or bedroom, unless a locality makes specific findings.

When Does Chapter 1062 Take Effect for Second-Unit Law?

Government Code Section 65852.2(a)(3) requires where a local agency has a local ordinance in accordance with subsections (a) or (c), an application for a second-unit permit is to be considered ministerially without discretionary review or public hearing on or after **July 1, 2003**. Local jurisdictions without an ordinance must utilize the State second-unit standards set forth in Section 65852.2(b) and are required to ministerially consider second-unit applications after **January 1, 2003**.

Chapter 1062 does not necessarily require a local agency to adopt or amend a second-unit ordinance (Section 65852.2(a)(3)). If a locality has a second-unit ordinance in accordance with subsections (a) or (c) of second-unit law, an application should be considered ministerially. For example, if a locality has an ordinance with development standards in accordance with the intent of second-unit law and subsection (a) and requires a conditional use permit, the locality should consider a second-unit application ministerially according to the adopted development standards

and any provisions of the local ordinance which are in conflict with second-unit law, such as a conditional use permit, should be considered null and void. However, if a locality has a second-unit ordinance that does not meet the intent and subsections (a) or (c), the locality is required to ministerially consider a second-unit application in accordance with the State standards in subsection (b).

What is Ministerial Review?

Chapter 1062 requires development applications for second-units to be "...considered ministerially without discretionary review or a hearing..." or, in the case where there is no local ordinance in compliance with subsections (a) or (c), a local government must "...accept the application and approve or disapprove the application ministerially without discretionary review..." In order for an application to be considered ministerially, the process must apply predictable, objective, fixed, quantifiable and clear standards. These standards must be administratively applied to the application and not subject to discretionary decision-making by a legislative body (For clarification see the attached definition of ministerial under California Environmental Quality Act (CEQA) Guidelines, Section 15369.). The definition is generally accepted and was prepared pursuant to Public Resources Code.

An application should not be subject to excessively burdensome conditions of approval, should not be subject to a public hearing or public comment and should not be subject to any discretionary decision-making process. There should be no local legislative, quasi-legislative or discretionary consideration of the application, except provisions for authorizing an administrative appeal of a decision (see Appeal discussion below).

The intent of Chapter 1062 is to improve certainty and predictability in the approval process. Where special use or variances must apply, the locality should grant the variance or special use permit without a public hearing for legislative, quasi-legislative or discretionary consideration, as authorized by Government Code Section 65901. An application for consideration by a board of zoning adjustments or zoning administrator should apply a limited and fixed set of clear, predictable and objective standards without the application of discretionary conditions or public comment.

Chapter 1062 does not affect local government measures to keep the public apprised of pending applications and the status of the decision-making process. A local government should handle public noticing in the same manner as other ministerial actions. For example, if a local government allows new construction of a single-family residence by right or ministerially and public notice is not given for these applications, then a local government should employ the same procedures for second-unit applications. The appropriate point for public comment is the discretionary action adopting or amending a second-unit ordinance.

As explicitly stated in the provisions of 65852.2(a), a locality may require second-units to comply with development standards such as height, setback and architectural review. At the same time, architectural review should be handled in a ministerial fashion without discretionary public hearings or review. Architectural review in a ministerial fashion includes architectural standards and design guidelines with clear, fixed and objective standards. These standards should provide a

predictable concept of appropriate second-unit development. For example, the compatibility of the materials with the existing structure, exterior color, subordinate bulk or compatible exterior surface texture are architectural standards that can be applied in a ministerial manner, especially with the aid of design review guidelines. Architectural review standards should not impede the creation of second-units and should not detrimentally affect the feasibility or affordability of second-units.

Can a Locality Accept Appeals If a Second-unit Application Is Denied?

A locality can provide an appeal process for applicants whose second-unit proposal is denied. The appeal process should maintain predictable and fixed approval standards, consistent with the intent of Chapter 1062. Accordingly, an appeal should not include a public hearing with public comment as part of a discretionary decision. The appeal process should be handled in a ministerial and administrative manner and should be limited in scope, only considering the proposal's compliance with the objective standards of the second-unit ordinance.

Can a Locality Consider an Additional Process to Consider Second Units if the Standards Established by Chapter 1062 Have Been Met?

If a local ordinance is consistent with subdivisions (a) and (c-g) of second-unit law and consistent with the intent of the law, a local government could also adopt an ancillary set of broader standards under which second-units might be allowed under a discretionary review process as exceptions to existing zoning. While the statute does not preclude a broader and more flexible set of standards, localities must be very careful that any criteria or process for a secondary set of standards is only ancillary to the ministerial consideration required by Chapter 1062. Typical exceptions to zoning could be handled administratively or quasi-judicially.

Homeowners in the community are entitled to have a realistic opportunity to create second-units. If the locality fails to provide an adequate ministerial process pursuant to subdivision (a) and (c-g), applications for second-units should be subject to the State standards of subdivision (b) of Section 65852.2.

Is a Locality Required to Allow Second-Units in Multifamily Zones?

While second-units may be allowed in both single- and multi-family zones (Sections 65852.2(a)(1) and (b)(1)(B)), nothing in the statute requires more than one second-unit to be permitted on a single parcel. The State standards specifically require that the lot contain an existing single-family dwelling (Section 65852.2(b)(1)(C)) and localities could adopt a similar requirement. Alternatively localities could permit second-units on parcels containing, for example, a duplex. The guiding principle for the local ordinance should be to avoid provisions that are "...so arbitrary, excessive or burdensome so as to unreasonably restrict the ability of homeowners to create second-units in zones where they are authorized by local ordinance." (Section 65852.150). For example, second-units should not be arbitrarily excluded from appropriate geographic areas.

Are Second-Units Exempt from Local Growth Control?

Yes. Government Code Section 65852.2(a)(2) states second-units shall not be considered in the application of any local ordinance, policy, or program to limit residential growth. Second-units must be exempt from growth control measures regardless of whether the growth control has been

enacted by local initiative or the legislative body. Local governments should take steps to address any inconsistency between the second-unit mandate and local initiatives, ordinances, policies, programs or any other regulations to limit residential growth.

What Kind of Environmental Review is Required for Second-Units?

Second-units approved ministerially are statutorily exempt from CEQA pursuant to Section 15268 (Ministerial Projects) of the CEQA guidelines and Section 21080(b)(1) of the Public Resources Code. In addition, second-units can be categorically exempt from CEQA pursuant to Sections 15301 and 15303 of the CEQA guidelines, authority cited under Public Resources Code Section 21083 and 21087.

How Can a Locality Encourage Second-Units?

Local governments can encourage second-unit development through a variety of mechanisms. For example, a locality could develop information packets to market second-unit construction. A packet could include materials for a second-unit application, explain the application process, and describe incentives to promote their development. A locality could also advertise second-unit development opportunities to homeowners on the community's web page, at community and senior centers, in community newsletters, and in local utility bills, etc. Some local governments establish and maintain a second-unit specialist in the current planning division to assist in processing and approving second-units. A local government can also establish flexible zoning requirements, development standards, processing and fee incentives that facilitate the creation of second-units (Government Code Section 65852.2(g)). Incentives include reduced parking requirements near transit nodes, tandem parking requirements, pre-approved building plans or design prototypes, prioritized processing, fee waivers, fee deferrals, reduced impact fees, reduced water and sewer connection fees, setback reductions and streamlined architectural review. For example, the City of Santa Cruz established pre-approved design prototypes to encourage and stimulate the development of second-units.

Localities can also monitor the effectiveness of ordinances, programs and policies encouraging the creation of second-unit development. Some localities monitor implementation of second-unit strategies through the annual general plan progress report (Government Code Section 65400). Evaluating the effectiveness of a second-unit ordinance can assist the local government in determining appropriate measures to improve usefulness and further facilitate the development of housing affordable to lower- and moderate-income families.

See the second-unit bibliography in the Resources section for additional resources on the development of second-units.

Can a Locality Have Occupancy Requirements on Second-Units?

Requirements restricting the occupancy of a second-unit may be susceptible to legal challenge. In a 1984 decision, the Superior Court (Hubbart vs. County of Fresno, Superior Ct. No. 309140-2, 10/3/84), voided a Fresno County zoning ordinance which required that occupancy of a second-unit be limited to persons related to the main unit's owner. The Court stated that the ordinance violated the plaintiff's right to privacy guaranteed by Article I, Section I of the California Constitution.

In a 2001 decision (*Coalition Advocating Legal Housing Options v. City of Santa Monica*), a second-unit ordinance preventing non-dependent adult children or relatives, as well as unrelated persons while permitting dependents and caregivers, was declared unconstitutional under the right to privacy and equal protection clause of the California Constitution.

A local ordinance could include income restrictions on the occupancy of a second-unit to ensure the creation of housing affordable to low- and moderate-income households. A local ordinance could also require one of the dwellings on the property to be owner-occupied. However, an ordinance with these restrictions and requirements should be developed in a manner that encourages the creation of second-units as opposed to restricting the development of second-units.

Does Second-Unit Law Apply to Charter Cities and Counties?

Yes. Charter cities and counties must particularly give way to State general laws such as second-unit law when there are matters of Statewide concern (*Coalition Advocating Legal Housing Options v. City of Santa Monica* (2001) 105 Cal. Rptr. 2d 802), as stated by the Legislature in Government Code Sections 65580, 65852.150 and 65852.2(i)(2). Further, second-unit law explicitly applies to “local agencies” which are defined as general law or charter (Government Code Section 65852.2(i)(2)).

Does Second-Unit Law Apply to Localities in the Coastal Zone?

Yes. The California Coastal Act was enacted to preserve our natural coastal resources for existing and future Californians. While second-units utilize existing built areas and usually have minimal environmental impact, the need for second-units should be balanced against the need to preserve our unique coastal resources. For these reasons, second-unit law shall not supersede, alter or lessen the effect or application of the California Coastal Act (Division 20 of the Public Resources Code), except that local governments shall not be required to hold public hearings for coastal development permit (CDP) applications for second-units (Government Code 65852.2(j)). As stated in correspondence, dated January 13, 2003 from the California Coastal Commission to all coastal communities, local governments in the coastal zone should amend their Local Coastal Program (LCP) to not require a public hearing in the consideration of second-unit applications. Further, local appeals should be handled in an administrative manner.

Should a Locality Submit Their Second-Unit Ordinances to HCD?

Yes. Government Code Section 65852.2(h) requires submittal of an ordinance adopted pursuant to subsection (a) and (c) to the State Department of Housing and Community Development (Department) within 60 days of adoption. The Department will establish a clearinghouse of local ordinances to assist local governments in developing effective and meaningful ordinances. The Department is also available to provide technical assistance in the preparation of second-unit ordinances. Local governments are encouraged to send electronic copies of their ordinance to the Department at pmcdouga@hcd.ca.gov.

Chapter 1062, Statutes of 2002 **(Assembly Bill 1866)**

B. CHANGES TO GOVERNMENT CODE SECTION 65852.2

Government Code Section 65852.2 was amended by Chapter 1062 (AB 1866) as follows:

Government Code Section 65852.2 (additions or changes in italics/underlined and deletions indicated by asterisks with substantive changes italicized in parentheses)

65852.2.(a) (1) Any local agency may, by ordinance, provide for the creation of second-units in single-family and multifamily residential zones. The ordinance may do any of the following:

***** (A) Designate areas within the jurisdiction of the local agency where second units may be permitted. The designation of areas may be based on criteria, *that* may include, but are not limited to, the adequacy of water and sewer services and the impact of second units on traffic flow.

***** (B) Impose standards on second units *that* include, but are not limited to, parking, height, setback, lot coverage, architectural review, ***** maximum size of a unit, *and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Places.*

***** (C) Provide that second units do not exceed the allowable density for the lot upon which the second unit is located, and that second units are a residential use that is consistent with the existing general plan and zoning designation for the lot.

***** *(Provisions to establish a process for the issuance of conditional use permits deleted)*

(2) *The ordinance* shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(3) When a local agency receives its first application on or after July 1, 2003, for a permit pursuant to this subdivision, the application shall be considered ministerially without discretionary review or a hearing, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits. Nothing in this paragraph may be construed to require a local government to adopt or amend an ordinance for the creation of second units. A local agency may charge a fee to reimburse it for costs that it incurs as a result of amendments to this paragraph enacted during the 2001-02 Regular Session of the Legislature, including the costs of adopting or amending any ordinance that provides for the creation of second units.

(b) (1) When a local agency which has not adopted an ordinance governing second units in accordance with subdivision (a) or (c) receives its first application on or after July 1, 1983, for a ***** (*conditional use deleted*) permit pursuant to this subdivision, the local agency shall accept the application and approve or disapprove the application ministerially without discretionary review pursuant to this subdivision unless it adopts an ordinance in accordance with subdivision (a) or (c) within 120 days after receiving the application. Notwithstanding Section 65901 or 65906, every local agency shall grant a variance or special use ***** (*conditional use deleted*) permit for the creation of a second unit if the second unit complies with all of the following:

(A) The unit is not intended for sale and may be rented.

(B) The lot is zoned for single-family or multifamily use.

(C) The lot contains an existing single-family dwelling.

(D) The second unit is either attached to the existing dwelling and located within the living area of the existing dwelling or detached from the existing dwelling and located on the same lot as the existing dwelling.

(E) The increased floor area of an attached second unit shall not exceed 30 percent of the existing living area.

(F) The total area of floorspace for a detached second unit shall not exceed 1,200 square feet.

(G) Requirements relating to height, setback, lot coverage, architectural review, site plan review, fees, charges, and other zoning requirements generally applicable to residential construction in the zone in which the property is located.

(H) Local building code requirements which apply to detached dwellings, as appropriate.

(I) Approval by the local health officer where a private sewage disposal system is being used, if required.

(2) No other local ordinance, policy, or regulation shall be the basis for the denial of a building permit or a use permit under this subdivision.

(3) This subdivision establishes the maximum standards that local agencies shall use to evaluate proposed second units on lots zoned for residential use which contain an existing single-family dwelling.

No additional standards, other than those provided in this subdivision or subdivision (a), shall be utilized or imposed, except that a local agency may require an applicant for a permit issued pursuant to this subdivision to be an owner-occupant.

(4) No changes in zoning ordinances or other ordinances or any changes in the general plan shall be required to implement this subdivision. Any local agency may amend its zoning ordinance or general plan to incorporate the policies, procedures, or other provisions applicable to the creation of second units if these provisions are consistent with the limitations of this subdivision.

(5) A second unit which conforms to the requirements of this subdivision shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use which is consistent with the existing general plan and zoning designations for the lot. The second units shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(c) No local agency shall adopt an ordinance which totally precludes second units within single-family or multifamily zoned areas unless the ordinance contains findings acknowledging that the ordinance may limit housing opportunities of the region and further contains findings that specific adverse impacts on the public health, safety, and welfare that would result from allowing second units within single-family and multifamily zoned areas justify adopting the ordinance.

(d) A local agency may establish minimum and maximum unit size requirements for both attached and detached second units. No minimum or maximum size for a second unit, or size based upon a percentage of the existing dwelling, shall be established by ordinance for either attached or detached dwellings which does not permit at least an efficiency unit to be constructed in compliance with local development standards.

(e) Parking requirements for second units shall not exceed one parking space per unit or per bedroom. Additional parking may be required provided that a finding is made that the additional parking requirements are directly related to the use of the second unit and are consistent with existing neighborhood standards applicable to existing dwellings. Off-street parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions, or that it is not permitted anywhere else in the jurisdiction.

(f) Fees charged for the construction of second units shall be determined in accordance with Chapter 5 (commencing with Section 66000).

(g) This section does not limit the authority of local agencies to adopt less restrictive requirements for the creation of second units.

(h) Local agencies shall submit a copy of the ordinances adopted pursuant to subdivision (a) or (c) to the Department of Housing and Community Development within 60 days after adoption.

(i) As used in this section, the following terms mean:

(1) "Living area," means the interior habitable area of a dwelling unit including basements and attics but does not include a garage or any accessory structure.

(2) "Local agency" means a city, county, or city and county, whether general law or chartered.

(3) For purposes of this section, "neighborhood" has the same meaning as set forth in Section 65589.5.

(4) "Second unit" means an attached or a detached residential dwelling unit which provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family dwelling is situated. A second unit also includes the following:

(A) An efficiency unit, as defined in Section 17958.1 of Health and Safety Code.

(B) A manufactured home, as defined in Section 18007 of the Health and Safety Code.

(j) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local government shall not be required to hold public hearings for coastal development permit applications for second units.

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C. OTHER PERTINENT CODE SECTIONS

Government Code Section 65901

(a) The board of zoning adjustment or zoning administrator shall hear and decide applications for conditional uses or other permits when the zoning ordinance provides therefore and establishes criteria for determining those matters, and applications for variances from the terms of the zoning ordinance. The board of zoning adjustment or the zoning administrator may also exercise any other powers granted by local ordinance, and may adopt all rules and procedures necessary or convenient for the conduct of the board's or administrator's business.

(b) In accordance with the requirements for variances specified in Section 65906, the legislative body of the city or county may, by ordinance, authorize the board of zoning adjustment or zoning administrator to decide applications for variance from the terms of the zoning ordinance without a public hearing on the application. That ordinance shall specify the kinds of variances which may be granted by the board of zoning adjustment or zoning administrator, and the extent of variation which the board of zoning adjustment or zoning administrator may allow.

Government Code Section 65906

Variances from the terms of the zoning ordinances shall be granted only when, because of special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classification.

Any variance granted shall be subject to such conditions as will assure that the adjustment thereby authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is situated.

A variance shall not be granted for a parcel of property which authorizes a use or activity which is not otherwise expressly authorized by the zone regulation governing the parcel of property. The provisions of this section shall not apply to conditional use permits.

CEQA Guidelines: Section 15369 Ministerial

"Ministerial" describes a governmental decision involving little or no personal judgment by the public official as to the wisdom or manner of carrying out the project. The public official merely applies the law to the facts as presented but uses no special discretion or judgment in reaching a decision. A ministerial decision involves only the use of fixed standards or objective measurements, and the public official cannot use personal, subjective judgment in deciding

whether or how the project should be carried out. Common examples of ministerial permits include automobile registrations, dog licenses, and marriage licenses. A building permit is ministerial if the ordinance requiring the permit limits the public official to determining whether the zoning allows the structure to be built in the requested location, the structure would meet the strength requirements in the Uniform Building Code, and the applicant has paid his fee.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Section 21080(b)(1), Public Resources Code; *Johnson v. State of California*, 69 Cal. 2d 782; *Day v. City of Glendale*, 51 Cal. App. 3d 817.

Discussion: This definition draws upon earlier judicial definitions of "ministerial" and discretionary governmental actions and provides examples. Neither term is technically precise.

Chapter 1062, Statutes of 2002 **(Assembly Bill 1866)**

D. RESOURCES AND CONTACTS

Second-Units Resource List (Arranged alphabetically by title)

Accessory Apartments: Are They A Realistic Alternative for Ageing in Place? -- [London, UK]: Taylor & Francis Group. **Housing Studies - Vol. 16, No. 5, p. 637-650 (Sept. 10, 2001)**
Chapman, Nancy J.; Howe, Deborah A (2001)

Abstract: The accessory apartment in North America - defined as the addition of a small, separate living unit within a detached single-family house - has been advocated as a housing alternative allowing older people to 'age in place'. Based on a survey of owners of accessory units built in Seattle, Washington State, that were developed since legalization in 1994 and a literature review, this research explores the extent to which accessory apartments are benefiting the elderly. Although only 14 percent of the owners and 11 percent of the tenants in Seattle were over 65, there is evidence that such apartments serve a higher proportion of older persons over time. Forty-three percent of the apartments were perceived to be accessible to people with disabilities. Advocates of older adults are advised to target middle-aged and young-old to encourage the development of accessory apartments. Age restrictions within zoning ordinances may be counterproductive by prohibiting their development by owners who have the energy and resources to undertake such a task.

Accessory Apartments in Single-Family Housing -- New Brunswick, NJ: Center for Urban Policy Research. *Gellen, Martin (1985)*-Monograph includes bibliographical references and index. Introduction - "This book examines accessory apartment conversions as an emerging trend in American housing. It also assesses their potential as an instrument of local and national housing policy. As the reproduction cost of housing has increased, consumers have begun to make more intensive use of existing dwellings. Accessory apartment conversions represent one form of this response..." (p. xiii)

Accessory Rental Units in the Portland Area: A Guide for Design, Development and Management/Institute of Portland Metropolitan Studies--Portland, OR: Portland State University, School of Urban and Public Affairs. *Seltzer, Ethan; Perry, Theodis (1995)*

Introduction - "...Since we are long past the era when government could be looked to for the provision of large numbers of affordable housing units, we need to collectively explore new or alternative methods that augment the efforts that government bodies will be making. Hence the purpose for this publication. One of the fastest ways to double the housing supply would be to allow every single-family house to serve as a duplex. Surely not all homeowners would be interested. However, for those that are, the rules ought to be clear and the goal of creating an additional unit achievable."

Accessory Units Resource Guide: The State of the Art -- Los Angeles, CA: Hare Planning & Design, 1993. *National Resource and Policy Center on Housing & Long Term Care (1993)*

Full text also available at: <http://www.aoa.gov/Housing/accunits.html>

"What are Accessory Units? The term 'accessory unit' is a general term used to refer to separate units typically created in the surplus space within a single family home. Accessory units include accessory apartments, accessory cottages, and elder cottage housing opportunity housing." - (p. 2)

Aging and Smart Growth: Building Aging Sensitive Communities/Funders' Network for Smart Growth and Livable Communities -- Miami, FL: Collins Center for Public Policy (Funders Network Translation Paper; no. 7). *Howe, Debra (2001)*

Full text also available at: <http://www.publichealthgrandrounds.unc.edu/urban/agingpaper.pdf>

Abstract: This report posits that the sprawling, automobile-dominated landscape so prevalent throughout the United States seriously limits the continued mobility and independence of older people, a reality that is of enormous consequence to the aging experience. In the years ahead, the growing number of seniors, a result of the aging of baby boomers, stands to overwhelm the system of care relied on by most seniors—family members, friends, and the social service system. The report underscores the importance of transforming our communities so that they are aging-sensitive, making it possible for people to maintain their health and independence even as needs change. Leadership is needed to support planning processes and implementation efforts that improve the interface between the aging experience and the built environment. Public education, training, research, and investment are necessary components of the action agenda that must be put into place if elders are to be full participants in—and not cut off from—our society in the coming decades.

Allowing Accessory Apartments: Key Issues for Local Officials / U.S. Dept. of Housing and Urban Development -- Washington, DC: HUD - Office of Policy Development and Research (Report no. HUD-PDR-747). *Hodges, Samuel J.; Goldman, Ellis G. (1983)*

Introduction – “A combination of factors, including smaller households, sharply rising housing costs, and general economic conditions has led to a growing interest in the creation of accessory apartments in single-family homes. Accessory apartments are self-contained dwelling units created from existing space, including separate kitchen and bath facilities and a separate entrance.” (p. 3).

Alternative Housing Arrangements: A Selected Information Guide / U.S. Dept. of Housing and Urban Development--Washington, DC: HUD-Office of Policy Development and Research. *Hare, Patrick (1985)*

Introduction - "Alternative living arrangements is the collective name for shared housing, household matching services, accessory apartments, and ECHO housing or granny flats -- a new name for old ideas with new relevance. As the demographics in the United States change, these forms of housing can become attractive options for the growing numbers of single persons, small families, and older persons seeking housing to fit their needs and their budgets..." (p. 1).

A Cottage for Sale: Low-Cost ‘Granny Flats’ Combine Proximity with Privacy. *The Washington Post* - 118, 330 - Tues. ed., col. 1, p.WH9- *Hamilton, M. (1996 Oct 31)*

Abstract: "This might offer an opportunity for people to take care of their older relatives without huge expenses," said George Gaberlavage, a senior analyst in the American Association of Retired Persons Public Policy Institute. "What if you could put one of these housing units on your land and it was tastefully done and the community was assured that it's going to be for a relative and not for

rental purposes? It might be a great way of helping families." [Marlys] Marshall had a unit installed in her garage that allows her mother and father to live nearby. Her mother became disabled after falling and breaking a hip in 1991. Marshall's father was able to care for his wife until last March, when spinal degeneration left him confined to a wheelchair...

E.C.H.O. Housing: A Review of Zoning Issues and Other Considerations -- Washington, DC: American Association of Retired Persons - Report includes bibliographical references. *Hare, Patrick H.; Hollis, Linda E. (1983)*

Introduction - "This booklet represents a review of the technical zoning issues raised by Elder Cottage Housing Opportunity (ECHO) units, small temporary units placed in side or rear yards to enable adult children to take care of aging parents..." (p. 4).

Everything's Relative. Builder - Vol. 22, no. 13 - p. 200(1) *Weber, C. (1999, October)*

Abstract: Planned community development Amelia Park in Amelia Island, FL, combines conventional land planning and architecture inspired by history. The popularity of the development reflects in the fact that more than 50% of its units have already been sold. All Amelia Park homes including the townhouse models have a standard detached rear-loaded garage. However, the granny flats above are zoned as rental units and can be used for home offices, studios or extra living space.

Great Expectations. Builder - Vol. 23, no. 7 - p. 124-134 *Weber, C. (2000, June)*

Abstract: A booming economy and buyers with more sophisticated tastes have compelled the home building industry to provide innovative plans and design details usually reserved only for custom houses. Demographic shifts are creating new family situations and a need for niched products to accommodate those lifestyles. One solution to maintaining household peace is providing what used to be called a granny flat or in-law suite. Today's updated version of this old-fashioned idea is a flexible bonus space with a separate entrance that can perform multiple functions. Most households now have 2 computers, and people from 8 to 80 need home space to work, surf, and play. In smaller square footages, Internet alcoves are sufficient.

How to Make Housing Affordable: Let People Subdivide Their Homes. U.S. News & World Report - Vol. 121, no. 26 - p. 51-(2) *Maass, P. (1996, Dec 30)*

Abstract: The high cost of housing can drive people to poverty as they pay more than half of their gross income for a roof over their heads. Zoning laws in many cities should be changed to allow people to build accessory apartments to lower costs for themselves as well as others and provide a form of security.

Installations of Accessory Units In Communities Where They Are Legal -- Washington, DC: Hare Planning & Design. *Hare Planning & Design (1990)*

Introduction: Accessory units as used here includes both accessory apartments and accessory cottages. Accessory apartments are complete, separate living units installed in the surplus space in single family homes. The potential of accessory apartments to provide housing stems from the fact that the baby boom has been followed by an empty nester boom, or more technically, by underutilization of single family housing stock.

New Urban and Standard Suburban Subdivisions: Evaluating Psychological and Social Goals / American Planning Association -- Chicago, IL: APA, 2001. Article includes bibliographical references. **Journal of the American Planning Association - Vol. 67, no.4, Autumn 2001 (p. 402-419)** Brown, Barbara B.; Cropper, Vivian L. (2001)

"Residents of both subdivisions were interviewed about their sense of community, neighborliness, neighborhood uses, attitudes toward diverse neighborhoods, and support of distinctive New Urbanist residential design strategies: accessory apartments, reconfigured house/garage siting, and narrow alleys behind homes." - (p. [1]).

Second Units -- Sacramento, CA: The Dept. - Division of Housing Policy Development. June 1995 reprint of December 1990 technical assistance paper. *California. Dept. of Housing and Community Development (1995)*

"Second units, also referred to as 'in-law apartments', 'granny flats', or 'accessory apartments', may offer an additional source of affordable housing to homeowner and the community. By promoting the development of second units, a community may ease a rental housing deficit, enable homeowners with declining incomes to supplement their incomes, and make more economical use of land and existing infrastructure." - (Cover).

Second Units: An Emerging Housing Resource – San Francisco, CA: People for Open Space (POS Housing/Greenbelt Program technical report; no. 2-E). Report includes bibliographical references. *Verrips, Bert (1983)*

Summary: The conversion of existing single-family dwellings to add secondary units is a potentially effective, environmentally sensitive, and economically feasible response to the Bay Area's serious housing problem. However, because of resident concerns with the impacts of second units on existing neighborhoods, the development of such units is either illegal or severely restricted in most communities. The purpose of this report is to evaluate the costs and benefits of second units, and consider what regulations might be appropriate to respond to the impacts of second units while still encouraging their development.-(p. iii).

Secondary Units (Accessory Apartments and ECHO Housing: A Step-by-step Program Development Guide -- Albany, NY: Rural Aging Services Partnerships (R.A.S.P. Resource manual; no. 6). *Pollak, Patricia B. (1986)*

"Installing an accessory apartment in a single-family home can provide an older homeowner with a source of income. In addition, tenants can often provide assistance with home maintenance and other chores. The presence of a tenant can also add a sense of security for an older homeowner. Yet privacy and independence need not be sacrificed. For the community, accessory apartments represent an increased supply of small apartments created by more intensively using existing housing resources."- (p. 5).

Small Solutions: Second Units as Affordable Housing: The Evaluation of The Double Unit Opportunity Program -- San Francisco, CA: The Fund. *San Francisco Development Fund (1988)*

For many California residents, suitable housing at an affordable level is simply unavailable. One potential source of affordable rental housing is to use under-utilized space in single-family neighborhoods to create second units. These small dwelling units, also known as accessory apartments, in-law apartments, or granny flats, involve no land acquisition costs and minimal new infrastructure." - (p. 1).

Two-By-Two: A Status Report on Accessory Apartments in the Bay Area -- Chicago, IL: American Planning Association. **Planning - Vol. 54, no. 11 - p. 22-23** *Lawrence, J.; Watson, L. (1988, November)*

"After three years of experience with accessory apartments, or "second units" as they are called in the Bay Area, the San Francisco Development Fund has concluded that this is an innovation that works." - (p. 22).

Your New Neighbor: Mom - Instead of Scattering, More Extended Families are Living in the Same Town... or on the Same Block: June Fletcher Reports on 'Granny Flats,' In-laws Next Door and Big Brother Down The Street. **Wall Street Journal - (Eastern ed.) Fri. ed., col. 2, W1-Fletcher, J. (2002, Dec 20)**

Abstract: Well, sometimes. At first, Jo Ann and John Wydra were delighted when his sister, Betty O'Connor, decided to move in next door to their Huntley, Ill., home. They even put her up for a couple of months, until she got settled. But then she started going through their messy closets and "straightening up" Mrs. Wydra's exuberant cottage-style garden (her own flowers are all lined up in neat rows). "She's a perfectionist; we're not," says Mrs. Wydra, whose husband is now joking about putting in an electric fence. All this togetherness is a big change from the years when generations tended to move farther apart. But with the nation's retired population growing sharply, more older parents started moving into the same neighborhood as the kids. Now these multigenerational communities are moving to a new level as more families pull together in slow times.

Tentative List of Contacts

The Department is in the process of creating a list of organizations and local governments to assist in the implementation of Chapter 1062. The following list consists of a few local governments that have adopted second unit ordinance to meet the intent of Chapter 1062, including submittal to the Department. If you have any suggestions for potential organization or local governments to be added, please contact Paul Mc Dougall at (916) 322-7995.

City of Claremont	City of Healdsburg	City of Livermore
City of Pleasanton	Sacramento County	Town of San Anselmo
City of Santa Ana	City of Santa Rosa	City of Santee
City of Saratoga	City of Larkspur	

ATTACHMENT 2

Government Code Section 65583.1

A Portion of State Housing Element Law

Chapter 1062, Statutes of 2002

(Assembly Bill 1866)

A. IMPLEMENTATION DISCUSSION FOR GOVERNMENT CODE SECTION 65583.1

Introduction

Chapter 1062, Statutes of 2002 (AB 1866), clarified how second-units can be counted toward the adequate sites requirements in housing element law.

A housing element must identify adequate sites with zoning and development standards for a variety of housing types to meet a locality's share of the regional housing need in total and by income group (Government Code Section 65583(c)(1)). Local governments employ many techniques to identify adequate sites, including an inventory of vacant and underutilized land with a variety of zoning and development standards, upzoning, rezoning and mixed-use zoning. Chapter 1062 clarifies existing law and practice for local government's to identify the realistic capacity of new second-unit development to meet a portion of the adequate sites requirement.

In essence, local governments may count the *realistic* potential for new second-units *within the planning period of the element* considering the following factors: (1) the number of second units developed in the prior planning period; (2) an estimate of potential increase due to new policies, programs and incentives that encourage the development of second-units; and (3) other relevant factors.

The following is a discussion of the new legislation to assist localities in carrying out the provisions of Chapter 1062 (AB 1866). For an identification of the text of AB 1866 and changes to Government Code Section 65583.1, see the second section of this attachment, titled "Changes to Government Code Section 65583.1".

Resources and Incentives

The statute enables existing and proposed policies and programs, including incentives and regulatory relief, to support a local government's estimate of the realistic capacity of second-unit development in the planning period as part of the adequate sites requirement. Policies and programs encouraging the development of second-units can help to achieve realistic capacity of second-units in the planning period (see Attachment 1 for a discussion of ways to encourage the development of second-units).

The Need for Second-Units

In considering the need for second-units, a local government should evaluate household characteristics such as tenure, family type, household sizes, and other factors in relation to the types of units (i.e., number of bedrooms and minimum unit size requirements) allowed under the second-unit ordinance.

Other Relevant Factors

To demonstrate the realistic capacity for second-units to fulfill a portion of the adequate sites requirement, local governments should discuss and analyze other relevant factors that affect the potential for second-units in the planning period. For example, a housing element should provide an analysis of the anticipated affordability of second-units. The purpose of this analysis is to determine the housing need by income group that could be accommodated through second-unit development. Second-units are not required to be deed restricted for certain income groups.

The anticipated affordability of second-units can be determined in a number of ways. For example, a community could survey existing second-units for their rents and include other factors such as square footage, number of bedrooms, amenities, age of the structure and general location. The survey could be supplemented with analysis that describes the general range of rents and an estimate of rents for new second-units based on the variables within the survey. Another method could examine market rates for reasonably comparable rental properties to determine an average price per square foot in the community. This price can be applied to anticipated sizes for second-units to estimate the anticipated affordability of second-units.

Another relevant factor that should be analyzed is the impact of development standards in the second-unit ordinance (e.g. impact on the cost and supply of second-units). An analysis should address development standards (i.e., heights, setbacks, minimum unit sizes, lot coverage, parking standards, etc.), what zones allow second-units, architectural review standards, fees and exactions, any other components of the ordinance potentially impacting or constraining the development of second-units.

Finally, a community should analyze the extent to which physical and environmental constraints and infrastructure capacity influence its ability to accommodate the proposed capacity for second-units in the planning period.

Tracking Second Units

A community should track second-unit construction to monitor the effectiveness of their efforts to promote second-units and to facilitate the next housing element update. The first step in tracking second-units is to ensure that second-units are being counted as they are constructed. Most localities would count second-units as part of normal functions for building permit data. In any case, a locality should have some function that records the number of second-units built and an estimate of affordability at the time of occupancy, where feasible. Consistently maintained records will reveal trends in second-unit construction that may support a locality's efforts to count realistic capacity for second-units or may identify limitations that should be addressed to better promote additional second unit development.

In addition, a locality could annually summarize the number of second-units built; by which income group they are estimated to be affordable, as part of the annual general plan progress report (Government Code Section 65400). An annual summary will ensure a complete record and facilitate future updates of the housing element.

Chapter 1062, Statutes of 2002 (Assembly Bill 1866)

B. CHANGES TO GOVERNMENT CODE SECTION 65583.1

Government Code Section 65583.1 was amended by Chapter 1062 (AB 1866) as follows (additions or changes in italics/underlined and deletions indicated by asterisks):

65583.1. (a) The Department of Housing and Community Development, in evaluating a proposed or adopted housing element for compliance with state law, may allow a city or county to identify adequate sites, as required pursuant to Section 65583, by a variety of methods, including, but not limited to, redesignation of property to a more intense land use category and increasing the density allowed within one or more categories. The department may also allow a city or county to identify sites for second units based on the number of second units developed in the prior housing element planning period whether or not the units are permitted by right, the need for these units in the community, the resources or incentives available for their development, and any other relevant factors, as determined by the department. Nothing in this section reduces the responsibility of a city or county to identify, by income category, the total number of sites for residential development as required by this article.

(b) *Omitted – Chapter 1062 did not have changes to this subsection*

Any city, city and county, or county using this subdivision shall address the progress in meeting this section in the reports provided pursuant to paragraph (1) of subdivision (b) of Section 65400.

(c) *Omitted – Chapter 1062 did not have major changes to this subsection, only minor clean up*

BILL NUMBER: AB 1866 CHAPTERED
BILL TEXT

CHAPTER 1062

FILED WITH SECRETARY OF STATE SEPTEMBER 29, 2002
APPROVED BY GOVERNOR SEPTEMBER 29, 2002
PASSED THE ASSEMBLY AUGUST 29, 2002
PASSED THE SENATE AUGUST 27, 2002
AMENDED IN SENATE AUGUST 22, 2002
AMENDED IN SENATE AUGUST 5, 2002
AMENDED IN SENATE JUNE 19, 2002
AMENDED IN ASSEMBLY MAY 23, 2002
AMENDED IN ASSEMBLY MAY 14, 2002
AMENDED IN ASSEMBLY APRIL 22, 2002
AMENDED IN ASSEMBLY APRIL 1, 2002

INTRODUCED BY Assembly Member Wright

JANUARY 31, 2002

An act to amend Sections 65583.1, 65852.2, and 65915 of the Government Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

AB 1866, Wright. Housing: density bonuses.

(1) The Planning and Zoning Law requires the housing element of the general plan of a city or county, among other things, to identify adequate sites for housing, including rental housing, factory-built housing, and mobilehomes, and to make adequate provision for the existing and projected needs of all economic segments of the community. That law permits the Department of Housing and Community Development to allow a city or county to identify adequate sites by a variety of methods.

This bill would authorize the department to also allow a city or county to identify sites for 2nd units based upon relevant factors, including the number of 2nd units developed in the prior housing element planning period.

(2) The Planning and Zoning Law authorizes a local agency to provide by ordinance for the creation of 2nd units on parcels zoned for a primary single-family and multifamily residence, as prescribed.

This bill would require, when a local agency receives its first application on or after July 1, 2003, that the application shall be considered ministerially without discretionary review or hearing, notwithstanding other laws that regulate the issuance of variances or special use permits.

The bill would authorize a local agency to charge a fee to reimburse the agency for costs it incurs as a result of these provisions.

(3) The Planning and Zoning Law also requires, when a developer of housing proposes a housing development within the jurisdiction of the local government, that the city, county, or city and county

provide the developer with incentives or concessions for the production of lower income housing units within the development if the developer meets specified requirements. Existing law requires the local government to establish procedures for carrying out these provisions.

This bill would revise those provisions to refer to an applicant who proposes a housing development and would recast them to, among other things, revise criteria for making written findings that a concession or incentive is not required, add criteria for continued affordability of housing in a condominium project, authorize an applicant to request a meeting on its proposal for a specific density bonus, incentive, or concession or for the waiver or reduction of development standards, and exempt developments meeting certain affordability criteria from specified laws. By increasing the duties of local public officials, the bill would impose a state-mandated local program.

The bill would also authorize an applicant to initiate judicial proceedings if the city, county, or city and county refuses to grant a requested density bonus, incentive, or concession in violation of these provisions, and would require the court to award the plaintiff reasonable attorney's fees and costs of suit. It would authorize a local agency to charge a fee to reimburse it for costs that it incurs as a result of these provisions.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 65583.1 of the Government Code is amended to read:

65583.1. (a) The Department of Housing and Community Development, in evaluating a proposed or adopted housing element for compliance with state law, may allow a city or county to identify adequate sites, as required pursuant to Section 65583, by a variety of methods, including, but not limited to, redesignation of property to a more intense land use category and increasing the density allowed within one or more categories. The department may also allow a city or county to identify sites for second units based on the number of second units developed in the prior housing element planning period whether or not the units are permitted by right, the need for these units in the community, the resources or incentives available for their development, and any other relevant factors, as determined by the department. Nothing in this section reduces the responsibility of a city or county to identify, by income category, the total number of sites for residential development as required by this article.

(b) Sites that contain permanent housing units located on a military base undergoing closure or conversion as a result of action pursuant to the Defense Authorization Amendments and Base Closure and

65852.2. (a) (1) Any local agency may, by ordinance, provide for the creation of second units in single-family and multifamily residential zones. The ordinance may do any of the following:

(A) Designate areas within the jurisdiction of the local agency where second units may be permitted. The designation of areas may be based on criteria, that may include, but are not limited to, the adequacy of water and sewer services and the impact of second units on traffic flow.

(B) Impose standards on second units that include, but are not limited to, parking, height, setback, lot coverage, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Places.

(C) Provide that second units do not exceed the allowable density for the lot upon which the second unit is located, and that second units are a residential use that is consistent with the existing general plan and zoning designation for the lot.

(2) The ordinance shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(3) When a local agency receives its first application on or after July 1, 2003, for a permit pursuant to this subdivision, the application shall be considered ministerially without discretionary review or a hearing, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits. Nothing in this paragraph may be construed to require a local government to adopt or amend an ordinance for the creation of second units. A local agency may charge a fee to reimburse it for costs that it incurs as a result of amendments to this paragraph enacted during the 2001-02 Regular Session of the Legislature, including the costs of adopting or amending any ordinance that provides for the creation of second units.

(b) (1) When a local agency which has not adopted an ordinance governing second units in accordance with subdivision (a) or (c) receives its first application on or after July 1, 1983, for a permit pursuant to this subdivision, the local agency shall accept the application and approve or disapprove the application ministerially without discretionary review pursuant to this subdivision unless it adopts an ordinance in accordance with subdivision (a) or (c) within 120 days after receiving the application. Notwithstanding Section 65901 or 65906, every local agency shall grant a variance or special use permit for the creation of a second unit if the second unit complies with all of the following:

(A) The unit is not intended for sale and may be rented.

(B) The lot is zoned for single-family or multifamily use.

(C) The lot contains an existing single-family dwelling.

(D) The second unit is either attached to the existing dwelling and located within the living area of the existing dwelling or detached from the existing dwelling and located on the same lot as the existing dwelling.

(E) The increased floor area of an attached second unit shall not exceed 30 percent of the existing living area.

(F) The total area of floorspace for a detached second unit shall not exceed 1,200 square feet.

(G) Requirements relating to height, setback, lot coverage, architectural review, site plan review, fees, charges, and other zoning requirements generally applicable to residential construction in the zone in which the property is located.

(H) Local building code requirements which apply to detached dwellings, as appropriate.

(I) Approval by the local health officer where a private sewage disposal system is being used, if required.

(2) No other local ordinance, policy, or regulation shall be the basis for the denial of a building permit or a use permit under this subdivision.

(3) This subdivision establishes the maximum standards that local agencies shall use to evaluate proposed second units on lots zoned for residential use which contain an existing single-family dwelling.

No additional standards, other than those provided in this subdivision or subdivision (a), shall be utilized or imposed, except that a local agency may require an applicant for a permit issued pursuant to this subdivision to be an owner-occupant.

(4) No changes in zoning ordinances or other ordinances or any changes in the general plan shall be required to implement this subdivision. Any local agency may amend its zoning ordinance or general plan to incorporate the policies, procedures, or other provisions applicable to the creation of second units if these provisions are consistent with the limitations of this subdivision.

(5) A second unit which conforms to the requirements of this subdivision shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use which is consistent with the existing general plan and zoning designations for the lot. The second units shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(c) No local agency shall adopt an ordinance which totally precludes second units within single-family or multifamily zoned areas unless the ordinance contains findings acknowledging that the ordinance may limit housing opportunities of the region and further contains findings that specific adverse impacts on the public health, safety, and welfare that would result from allowing second units within single-family and multifamily zoned areas justify adopting the

ordinance.

(d) A local agency may establish minimum and maximum unit size requirements for both attached and detached second units. No minimum or maximum size for a second unit, or size based upon a percentage of the existing dwelling, shall be established by ordinance for either attached or detached dwellings which does not permit at least an efficiency unit to be constructed in compliance with local development standards.

(e) Parking requirements for second units shall not exceed one parking space per unit or per bedroom. Additional parking may be required provided that a finding is made that the additional parking requirements are directly related to the use of the second unit and are consistent with existing neighborhood standards applicable to existing dwellings. Off-street parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions, or that it is not permitted anywhere else in the jurisdiction.

(f) Fees charged for the construction of second units shall be determined in accordance with Chapter 5 (commencing with Section 66000).

(g) This section does not limit the authority of local agencies to adopt less restrictive requirements for the creation of second units.

(h) Local agencies shall submit a copy of the ordinances adopted pursuant to subdivision (a) or (c) to the Department of Housing and Community Development within 60 days after adoption.

(i) As used in this section, the following terms mean:

(1) "Living area," means the interior habitable area of a dwelling unit including basements and attics but does not include a garage or any accessory structure.

(2) "Local agency" means a city, county, or city and county, whether general law or chartered.

(3) For purposes of this section, "neighborhood" has the same meaning as set forth in Section 65589.5.

(4) "Second unit" means an attached or a detached residential dwelling unit which provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family dwelling is situated. A second unit also includes the following:

(A) An efficiency unit, as defined in Section 17958.1 of Health and Safety Code.

(B) A manufactured home, as defined in Section 18007 of the Health and Safety Code.

(j) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local government shall not be required to hold public hearings for coastal development permit applications for second units.

AN ORDINANCE AMENDING THE LIVERMORE PLANNING
AND ZONING CODE, AS AMENDED,
OF THE CITY OF LIVERMORE, BY AMENDING SECTION 3-10-020
RELATING TO SECONDARY DWELLING UNITS

(LIVERMORE PLANNING AND ZONING CODE TEXT AMENDMENT # 03-324)

THE LIVERMORE CITY COUNCIL DOES ORDAIN AS FOLLOWS:

Section 1. Section 3-10-020 of the Livermore Planning and Zoning Code of the City of Livermore, relating to Secondary Dwelling Units is hereby amended to read as follows:

“3-10-020 Secondary dwelling units.

A. Purpose. To provide an opportunity for the development of small rental units, to provide relatively affordable housing for low- and moderate-income individuals and families, to provide economic support for resident families and to provide rental units for the elderly or disabled while still maintaining the residential character of the surrounding neighborhood.

B. Requirements. One secondary dwelling unit per lot may be permitted in the city’s single-family residential zoning districts including Planned Unit Developments and Planned Development-Residential districts, subject to the following requirements:

1. Secondary units shall be limited to lots developed with no more than one existing dwelling unit.

2. The secondary unit shall be designed so as to maintain the appearance of a single-family home. Colors, materials, roof form, windows and window trim shall match those of the existing primary dwelling unit.

3. Secondary dwelling units shall not be for sale but may be rented.

4. Total lot coverage and/or floor area ratio (F.A.R.) shall be as required in the underlying zoning district.

5. A secondary dwelling unit 640 square feet in floor area or less, excluding garage, or with a maximum of one bedroom, shall be required to provide one additional off-street, on-site parking space. For units with two or more bedrooms, two off-street, on-site parking spaces shall be required. These two spaces may be in tandem with each other, but not with the required

ORDINANCE NO. _____

Article 6 - Second Dwelling Unit

20-03.111 Purpose.

The purpose of this article is to comply with amendments made in 2002, to State Law §65852.2 which provides for City's to set standards for the development of second dwelling units so as to increase the supply of smaller and affordable housing while ensuring that they remain compatible with *the existing neighborhood. It is not the intent of this ordinance to override lawful use restrictions as set forth in Conditions, Covenants and Restrictions.*

20-03.112 Definitions.

(A) Second Dwelling Unit: Any residential dwelling unit which provides complete independent living facilities on the same parcel as a legal single family residence and including, but not limited to, the permanent provisions for living, sleeping, eating, cooking and sanitation. A second dwelling unit also includes efficiency units and manufactured homes. Second dwelling units are not "accessory uses" as defined in Article 4.1 of Chapter 20-05.

- (1) Efficiency Unit: A separate living space with a minimum floor area of 150 square feet intended for occupancy by no more than two persons which contains partial kitchen and bathroom facilities. *For the purpose of this section, efficiency unit has the same meaning as Section 17958.1 of the Health and Safety Code.*
- (2) Manufactured home: A transportable structure which in the traveling mode is 8 feet or more in width and 40 feet or more in length and is a minimum of 320 square feet and which is built on a permanent chassis and is designed to be used as a dwelling with or without a permanent foundation. *For the purpose of this section, manufactured home has the same meaning as Section 18007 of the Health and Safety Code.*
- (3) Neighborhood: An area commonly identified as such in planning documents and among individuals who reside and work within close proximity.

20-03.113 Location.

(A) One second dwelling unit may be located on any residentially zoned lot that principally allow single family dwellings and which is either undeveloped or contains only a legal single-family detached dwelling.

(B) Second dwelling units shall not be allowed where roadways, public utilities and services are inadequate.

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(C) Second dwelling units are not required to meet the density requirements of the General Plan, but shall otherwise be consistent with General Plan text and diagrams.

(D) No second dwelling unit may be approved if located on, or adjacent to, real property that is listed in the California Register of Historic Places.

20.03.114 Permitting Procedures.

Any application for second dwelling unit that meets the location and development standards, contained in this code, shall be approved ministerially without discretionary review or public hearing.

20.03.115 Submittal Requirements and Application Processing.

(A) Step One- Submittal- The application package for a second dwelling unit permit shall be submitted to the Department of Community Development concurrent with the submittal of an application for building permit. In addition to the standard submittal requirements for a building permit, the second dwelling unit application package shall include:

- (1) Plot plan (drawn to scale): Dimension the perimeter of parcel on which the second dwelling will be located. Indicate the location and dimensioned setbacks of all existing and proposed structures on the project site and structures located within 50 feet of the project site. All easements, building envelopes, and special requirements of the subdivision as shown on the final map and improvement plans shall be included. Provide average slope calculations for the project site.
- (2) Floor Plans: Each room shall be dimensioned and the resulting floor area calculation included. The use of each room shall be identified. The size and location of all windows and doors shall be clearly depicted.
- (3) Elevations: north, south, east and west elevations which show all openings, exterior finishes, original and finish grades, stepped footing outline, roof pitch, materials and color board for the existing residence and the proposed second dwelling unit.
- (4) Cross Section: Provide building cross sections including, but not limited to: structural wall elements, roof, foundation, fireplace and any other sections necessary to illustrate earth-to-wood clearances and floor to ceiling heights.
- (5) Color photographs of the site and adjacent properties. The photos shall be taken from each of the property lines of the project site to show the project site and adjacent sites. Label each photograph and reference to a separate site plan indicating the location and direction of the photograph.

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